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# ENVIRONMENTAL ASSESSMENT BOARD

VOLUME: 148

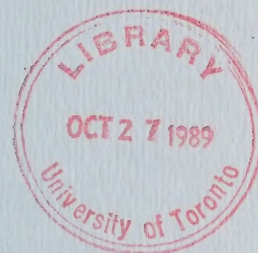
DATE: Tuesday, October 17, 1989

BEFORE:

M.I. JEFFERY, Q.C., Chairman

E. MARTEL, Member

A. KOVEN, Member




FOR HEARING UPDATES CALL (TOLL-FREE): 1-800-387-8810

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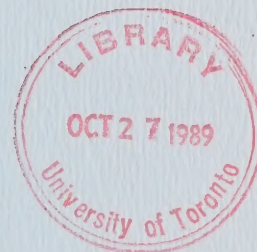
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HEARING ON THE PROPOSAL BY THE MINISTRY OF NATURAL  
RESOURCES FOR A CLASS ENVIRONMENTAL ASSESSMENT FOR  
TIMBER MANAGEMENT ON CROWN LANDS IN ONTARIO

IN THE MATTER of the Environmental  
Assessment Act, R.S.O. 1980, c.140;

- and -

IN THE MATTER of the Class Environmental  
Assessment for Timber Management on Crown  
Lands in Ontario;

- and -

IN THE MATTER OF a Notice by the  
Honourable Jim Bradley, Minister of the  
Environment, requiring the Environmental  
Assessment Board to hold a hearing with  
respect to a Class Environmental  
Assessment (No. NR-AA-30) of an  
undertaking by the Ministry of Natural  
Resources for the activity of timber  
management on Crown Lands in Ontario.

-----  
Hearing held at the Offices of the  
Environmental Assessment Board of Ontario,  
Suite 1201, 2300 Yonge Street, Toronto,  
Ontario, on Tuesday, October 17th,  
1989, commencing at 9:30 a.m.

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VOLUME 148

B E F O R E :

MR. MICHAEL I. JEFFERY, Q.C.	Chairman
MR. ELIE MARTEL	Member
MRS. ANNE KOVEN	Member

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1       ---Upon commencing at 9:30 a.m.

2                   THE CHAIRMAN: Ladies and gentlemen, as  
3       you are aware, the Board called this session in Toronto  
4       for the purpose solely of dealing with procedural  
5       matters, and specifically we want to essentially deal  
6       with three matters. The first of which - we'll invite  
7       discussion shortly - concerns the measures that the  
8       Board might take to substantially reduce the time in  
9       which to hear the remainder of this case and expedite  
10      the proceeding.

11                   The second will be to deal with how the  
12      Board might handle evidence concerning an additional,  
13      or parts thereof, plan; timber management plan, which  
14      might be put before the Board by the proponent as an  
15      example of how the new planning process has been  
16      utilized since 1986.

17                   And, thirdly, in effect, a re-scoping exercise  
18      of Panel 16 evidence because the Board was dissatisfied  
19      with the results of the previous scoping session.

20                   By far, the matter that is of prime  
21      interest to the Board today, and has been for several  
22      weeks, is how we might go about expediting these  
23      proceedings. The estimates put forward to the Board  
24      last week, which effectively indicated that this  
25      hearing could last, in terms of presentation of

1 evidence, as long as the summer of 1992 with a decision  
2 to be rendered within a few months after that -- and  
3 that is providing that the Ministry of the Environment  
4 chooses not to call evidence, it could even be longer  
5 based on those estimates if the Ministry of the  
6 Environment does produce a case -- is totally  
7 unacceptable to the Board.

8 And we feel, and have felt for some time,  
9 that there is virtually no case which should ever  
10 occupy that length of time in order for a Board of this  
11 type under this legislation to be in a position to  
12 render an informed decision. So what we are going to  
13 deal with today are specific proposals.

14 Now, I would like to advise the parties, as I'm  
15 sure you are already aware, that Mr. Tom Marshall, who  
16 is the Director of the Civil Law section of the  
17 Ministry of the Attorney General, is with us today at  
18 the invitation of the Board. The purpose in inviting  
19 Mr. Marshall here was so that he might have an  
20 opportunity of listening to the submissions made with  
21 respect to the expediting of this hearing. And it is  
22 likely that the Board, after it submits proposals aimed  
23 at shortening the length of this hearing, will consult  
24 with Mr. Marshall and seek his opinion as to whether or  
25 not the proposals put forward by the Board pose any



1 problems in the legal sense.

2 The Board has a pretty fair idea of what  
3 is or is not fair and what powers the Board itself  
4 possesses in terms of determining its own practice and  
5 procedure. But because of what is involved in this  
6 hearing, the Board is seeking at all times not to  
7 impose any conditions or practice or procedure which  
8 will unnecessarily invite any challenges before the  
9 Divisional Court. And in this light, we'll probably be  
10 seeking the Crown law offices' opinion as to what  
11 course of action the Board ultimately adopts, because  
12 we are adamant in our resolve to institute some changes  
13 to the existing procedure to date that will have the  
14 effect of expediting this proceeding.

15 Now, having said that, I believe we left  
16 off last week with a proposal by Mr. Campbell on behalf  
17 of the Ministry of Environment with respect to some  
18 steps that the Board could take, and these are outlined  
19 in a memorandum dated October 10th, 1989. And that was  
20 followed by comments of other counsel, specifically a  
21 proposal by Ms. Swenarchuk, to have the Board  
22 reconsider its earlier decision about the location of  
23 the hearing and perhaps move the proceedings,  
24 commencing with the Industry's case, to Toronto,  
25 bearing in mind that we would still be under that

1       proposal holding the hearing regarding certain  
2       participants, such as Grand Treaty No. 3, and the  
3       various locations set out as the locations of the  
4       satellite hearings in Northern Ontario.

5               If we did decide to relocate the hearing,  
6       we would certainly be back in Northern Ontario for  
7       significant periods to hear specific parties which we  
8       feel would necessarily have to be heard in Northern  
9       Ontario. But we want to invite submissions on any  
10      proposed relocation of the hearing as well.

11             I think we should perhaps start off by  
12      going back to the proposals put forward by Mr. Campbell  
13      and deal with them perhaps one by one.

14             Just before that, the Board wants to make  
15      one further comment, and that is this: There has been  
16      some criticism that has reached the Board's ears from  
17      time to time over the fact that it has allowed, up to  
18      this point, the Ministry of Natural Resources  
19      unrestricted time to present its case, and  
20      consequently, any change in procedure on the part of  
21      the Board at this time would be unfair to the other  
22      parties following.

23             The Board feels, however, and would  
24      answer any such criticism in this way: That the  
25      Ministry's case has, in fact, been presented much in



1 the fashion which they chose to present it, but it is  
2 now, at this point in time, out on the table -- with  
3 the exception, of course, of the last two witness  
4 panels -- for all to see, including the Board. And  
5 although it took some 15 or 16 months to this point to  
6 be put in, all of the parties in opposition or in  
7 support have had, effectively, an unrestricted  
8 opportunity to cross-examine the panels put forward by  
9 the proponent. And if we go back and take a look at  
10 the time spent in cross-examination in relation to the  
11 time spent in putting the evidence in in direct, I  
12 think you will find that the time spent in  
13 cross-examination far exceeds the time spent in direct.

14 So that we don't feel that it can be said  
15 that the parties do not know what case is being put  
16 forward by the Ministry. And in fact, in addition to  
17 the Board knowing what the Ministry's case essentially  
18 is, the Board also knows, to a large extent, what the  
19 positions of the various parties, either in support or  
20 in opposition, are as well through your  
21 cross-examinations.

22 Now, when we get to the other side of the  
23 case, as we mentioned last week, the Board is  
24 essentially concerned with knowing where you disagree  
25 with the positions put forward by the proponent and how

1       you might suggest that these positions be amended or  
2       changed. We would also, of course, want to know where  
3       the proponent has not addressed an issue that you feel  
4       should have been addressed in the first place.

5               All of the parties, including the Board,  
6       have the advantage of having before them draft  
7       conditions of approval put forward by the Ministry of  
8       Natural Resources. By the time we get to the  
9       Industry's case we will have suggested conditions of  
10      approval put forward by each of the parties. And it is  
11      again the Board's view that your side of the case --  
12      this is the side put forward by each individual  
13      party -- should be focused on those conditions of  
14      approval for both sides.

15             Now, the last matter that the Board  
16      wishes to comment on before we enter the discussions  
17      this morning, is the fact that it is the Board,  
18      essentially, that determines party status, and in doing  
19      so, parties have been granted party status to represent  
20      a particular interest, and in some cases - and it is  
21      very difficult in a case of this nature to avoid it -  
22      there is an overlap of some of those interests.

23             Notwithstanding that, it is the Board's  
24      expectation that the parties will fully cooperate so  
25      that where the interests coincide with another party,

1       that interest can be represented and put forward in  
2       terms of the opposition side of the case only once.

3               There is no advantage to the Board to  
4       hear that same interest articulated five different ways  
5       unless there is a substantial difference between the  
6       interests represented by the individual parties. And  
7       we feel it is within our power to stop any party and  
8       say, "We have heard about that issue, it has been put  
9       forward by such and such a party, and we do not intend  
10      to hear it again."

11              Very well. I think without commenting  
12      further, we should now perhaps call upon Mr. Campbell  
13      to indicate the results of any further discussions you  
14      might have had with the various parties or to indicate  
15      to us, having considered the discussions of last week,  
16      how you might further amend the suggestions put forward  
17      in your memorandum of October 10th.

18              Mr. Campbell?

19              MR. CAMPBELL: Thank you, Mr. Chairman.

20              There really have been no substantive  
21      additional discussions with the parties of the proposal  
22      put forward to you last week. I think it is fair to  
23      say, however, that with respect to the time periods for  
24      negotiations that are set out in paragraph E and  
25      paragraph F for reporting on the results of those



1 negotiations to the Board, we were aware in putting  
2 them forward that the time was very, very tight for the  
3 proponent in the sense that MNR would have to deal with  
4 many parties, whereas each party individually would  
5 only have to deal with MNR. And we want to be clear  
6 that we feel there is room for flexibility in those  
7 dates. We had to put some down and we felt it was  
8 appropriate to err on the side, rather of being a  
9 little lean than being a little fat.

10 I think subject to that, I really have  
11 nothing to add to what I spoke to last week, and won't  
12 take any more time for that reason.

13 THE CHAIRMAN: Thank you, Mr. Campbell.

14 Do any of the other parties have any  
15 submissions to make with respect to the suggestion put  
16 forward in paragraph E of Mr. Campbell's proposal, and  
17 that is the suggestion that the parties, after the  
18 conditions of approval are filed, for all of the  
19 parties attempt to negotiate agreement with respect to  
20 some of those proposed conditions; and in the event  
21 there is agreement, the terms of that agreement would  
22 be put forward to the Board which would then review it  
23 and if found suitable, in effect, ratify those  
24 agreements?

25 Is there any discussion with respect to that?

1 Mr. Freidin?

2 MR. FREIDIN: I'm assuming I'll have an  
3 opportunity to address paragraphs A through D in a  
4 moment.

5 In relation to E, I would just reiterate  
6 what Mr. Campbell indicated, that we had some concern  
7 having to deal with all the parties. Time was a bit  
8 short. And I would suggest that the times that are set  
9 out: April the 13th in Paragraph E, and April the 30th  
10 set out the Paragraph F, be extended by two weeks. So  
11 basically changing the communication, I guess, of the  
12 results to April the 30th and the Board setting aside a  
13 hearing time probably in the middle of May for the  
14 purposes set out in subparagraph F.

15 THE CHAIRMAN: Are you changing the March  
16 9th date at all?

17 MR. FREIDIN: I haven't really thought  
18 about changing that date. I think we would probably  
19 want to use every second of time we had up to April the  
20 30th, and I'm not too sure whether it's really  
21 necessary to specify a specific date as we have here  
22 for March the 9th, 1990. It would be understood that  
23 people would, in fact, make these people available to  
24 discuss these matters in an open and bona fide way with  
25 the intent of trying to get something concrete by April

1 30th.

2 Those are the only comments I would make.

3 MR. CHAIRMAN: That would be in the midst  
4 of the Industry's case, we presume.

5 MR. FREIDIN: Well, that's right. And  
6 that is obviously one of the problems we had in terms  
7 of timing, and that is why we have asked for that  
8 extra two weeks. Counsel for all the parties are going  
9 to be, I guess, tied up with the Industry's case.

10 I know from MNR's point of view, we are  
11 going to be tied up with that and we are going to have  
12 to make some special effort to free up at least lawyer  
13 time to be involved in these discussions, but we  
14 recognize the importance of them. The idea is  
15 something that we agree with, and I think we and  
16 everyone else will have to try and do our best.

17 MR. CHAIRMAN: What would the parties  
18 feel with respect to an appropriate time, after all of  
19 the conditions have been tabled, that the Board  
20 adjourn, for instance, for a period of two weeks to  
21 allow all of the parties to get together and carry out  
22 intensive negotiations during that period of time with  
23 the hope of arriving at some agreement, so that that  
24 time would be specifically and understood by all  
25 parties to be set aside for that purpose? It would not



1 be time away from the hearing, it would be time devoted  
2 exclusively for the purpose of the parties trying to  
3 negotiate some agreement on some of these outstanding  
4 issues.

5 MR. COSMAN: Mr. Chairman, we would  
6 strongly support that proposal.

7 First of all, let me say that we support  
8 the proposal as set out in paragraphs E and F by  
9 Mr. Campbell. We think it is an excellent idea and we  
10 think that the suggestion that you have just advanced  
11 will assist that process.

12 The problem, in our view, in part, has  
13 been that the parties do not have a target to aim at in  
14 the presentation of their evidence. For example, we  
15 are going to commence our case, and until the  
16 commencement of our case we will not know what, in  
17 fact, Ms. Swenarchuk or Mr. Hunter or others wish for  
18 their clients. So anything that can be done to require  
19 the parties to present the terms and conditions in as  
20 final a way as possible.

21 And, secondly, compel the parties to meet  
22 to see where, in fact, they are at issue in their  
23 positions, it will shorten the proceeding. Because if  
24 we know what, in fact, is in issue, we then will direct  
25 our oral testimony only to those matters.

1           To the extent that we don't know it, we  
2       are compelled, because of the importance of this case,  
3       to address it to matters at large. And at the present  
4       time we do not know, except by inference through  
5       cross-examination, what the position of the opposition  
6       is.

7           THE CHAIRMAN: Well, that brings up  
8       another question: That the parties in opposition are  
9       fast coming to the position of knowing the entirety of  
10      the proponent's case. Certainly it is Panel 15 and  
11      Panel 16 that will, in a sense, place the finishing  
12      touches on the proponent's case with 17 containing very  
13      little additional information.

14           And we would like to know why, for  
15      instance, the parties in opposition could not put  
16      forward their suggested conditions of approval at  
17      perhaps an earlier date, having arrived at this stage  
18      of the proceedings of knowing what the proponent is  
19      putting forward. And bearing in mind that we have said  
20      all along, and would stick to that ruling, that any  
21      suggested conditions of approval put forward by parties  
22      in opposition would be put forward essentially on a  
23      without prejudice basis.

24           MR. COSMAN: May I address that, Mr.  
25      Chairman, because it goes back to the first issue that

1       you raised?

2                       Under your previous order, September 16th  
3       '88, where you addressed draft terms and conditions,  
4       and particularly 4-B, which deals with the obligation  
5       of other parties to prepare their conditions, and 4-C,  
6       which deals with the fact that has been put forward on  
7       an without prejudice basis.

8                       I want to re-visit that with you briefly  
9       because I think it will assist to shorten the hearing  
10      if you, as a Board, were to tighten or strengthen your  
11      ruling at this point in time for the reason you've just  
12      given. The MNR's case is known to the parties.  
13      Presumably the parties know their own case. There is  
14      no reason, as you say, why the parties cannot put  
15      forward what they consider to be the draft terms and  
16      conditions that they suggest. Furthermore, the MNR has  
17      had in our hands for some time their proposed draft  
18      terms and conditions.

19                      The problem is, if these are put forward  
20      as a first cut, not seriously, but as a first cut or a  
21      first shot, with everyone keeping in their hip pocket  
22      the knowledge that they can put forward a wide variety  
23      of new conditions later on, it's not going to be of  
24      assistance.

25                      I would strongly urge the Board to



1       require the parties to put their minds to their case  
2       and come forward with a set of draft terms and  
3       conditions which are final, except that they may be  
4       amended with leave of the Board rather than -- because  
5       if we go into our case thinking that these are the  
6       draft terms and conditions and subsequently find out  
7       someone is coming forward with a whole set of new ones,  
8       it's going to create tremendous difficulties. Perhaps  
9       the language "without prejudice" could create that  
10      illusion.

11               THE CHAIRMAN: The Board could certainly  
12      consider a suggestion like that, Mr. Cosman, because I  
13      think the Board has come to the conclusion, as have  
14      some other parties, that everybody at this stage should  
15      have a pretty fair idea of where they stand and where  
16      the proponent stands. They know the proponent's case,  
17      as you have indicated they must know their own case,  
18      they must know those areas with which they disagree,  
19      and they must also have a reasonable idea of the  
20      proposals they wish to put forward for the Board to  
21      consider that is not dealt with by the proponent or is  
22      dealt with differently by the proponent.

23               I think the Board is of the view that any  
24      conditions of approval put forward by the parties  
25      should not be draft in the sense that they do not

1 represent the positions of those parties, because as  
2 you, I think, have rightly pointed out, if those  
3 conditions are changed substantially later on then we  
4 are going to have to, in the interests of fairness,  
5 allow other parties who have been prejudiced by that  
6 change, to further address the Board in terms of those  
7 changes, and we are going to go on endlessly back and  
8 forth.

9           The Board will seriously consider the  
10 proposition that if, in fact, conditions put forward in  
11 the first instance have to be changed and should be  
12 changed because of circumstances or because of the  
13 particular evidence that has come in subsequent to the  
14 proponent's case, then perhaps it should be with leave  
15 of the Board, and we would then consider on a case by  
16 case basis whether suggested conditions should be  
17 amended or amendments allowed. And it may well be  
18 there will be situations where that is very much the  
19 case.

20           But I think it is important for the  
21 parties, if they are going to reach any kind of  
22 agreement on issues in dispute, in order to remove them  
23 effectively from further consideration by the Board,  
24 there has to be some basis upon which they can arrive  
25 at that agreement, and that, in terms of this case,

1 appears to the Board to be only on the basis of the  
2 various conditions or suggestions put forward by the  
3 various parties.

4 MR. CAMPBELL: Mr. Chairman, if I could  
5 speak to that.

6 I think it's our view, with respect to  
7 the terms and conditions that are to be put forward in  
8 January -- and we would have no objection to that date  
9 being advanced by a couple of weeks. I think that  
10 wouldn't certainly, from our point of view, cause any  
11 problem -- give some thought about Christmas holidays  
12 before I say that so glibly. But I think that would be  
13 all right, a date something like January 10th perhaps.

14 THE CHAIRMAN: Just in that vein, Mr.  
15 Campbell. It is not unlikely that the Industry's case  
16 can start before mid-February, and that is based on the  
17 fact that we'll be dealing with Dean Baskerville during  
18 December and perhaps into January and then returning to  
19 the remainder, probably, of Panel 16 and Panel 17  
20 before we start the Industry's case. So there would be  
21 a period of time between all of the conditions being on  
22 the table and the Industry starting its case.

23 MR. CAMPBELL: That, of course, would be  
24 desirable. I will let Mr. Cosman focus his case a  
25 little more directly.



1                   I think in terms of adding a requirement  
2       that the terms and conditions only be amended with  
3       leave, it would be our submission that that is not  
4       appropriate for the set of terms and conditions that  
5       are submitted initially and which will be the topic of  
6       negotiations. I agree with my friend that parties  
7       surely ought to take that seriously, and we submit that  
8       the negotiating requirement will mean that they have to  
9       be taken seriously.

10                  I would think that my friend's suggestion  
11       would have more merit if it was attached to those  
12       remaining terms and conditions after the negotiation  
13       process is complete; that is, people submit -- and I  
14       submit they ought to submit -- seriously consider terms  
15       and conditions initially. The negotiation process goes  
16       on, hopefully agreements are reached, and some matters  
17       just disappear from the table, and then at that point  
18       the parties would have to indicate clearly and exactly  
19       what suggested terms and conditions they hope to be  
20       seeking having completed that negotiation process.

21                  And at that point, I think it might be  
22       appropriate for the Board to say, "All right, you've  
23       had the negotiation, you've settled some things, you've  
24       been very specific, we want you to be very specific and  
25       what remains on the table and what you want done with

1       that," and any leave requirement for further amendment,  
2       in my submission, should only be considered at that  
3       time.

4               THE CHAIRMAN: Why, Mr. Campbell, can't  
5       the parties arrive at their positions at this point in  
6       time? What is so mysterious about having had the  
7       advantage of knowing: (a) what the proponent's case  
8       is, (b) what suggested conditions are put forward by  
9       the proponent and, (c) the advantage of the  
10      cross-examinations of both that particular party and  
11      all other parties before them?

12             MR. CAMPBELL: I believe that the parties  
13      are in a position they can put forward seriously  
14      considered propositions for terms and conditions. I  
15      don't disagree with that at all.

16             THE CHAIRMAN: Why this extra step  
17      though?

18             MR. CAMPBELL: What I'm suggesting is  
19      that the negotiation process may change the view of  
20      exactly and precisely what they want at the end. Some  
21      of that will disappear and some of it -- you know,  
22      negotiations have a way of educating as well, and there  
23      may be an ability to focus the term and condition or to  
24      deal with something in more detail or in a more  
25      comprehensive way in the light of those negotiations.

1 And it's at that point I think that the Board should  
2 say, "All right, you've put forward what you proposed,  
3 you've all discussed it amongst yourselves. The  
4 parties are unable to agree and want some additional  
5 items that are not agreed to. We want to know what  
6 they are, and if you are going to depart from them we  
7 want to know -- in the future we want to know why."  
8 That is the appropriate process.

9 THE CHAIRMAN: And you are saying that  
10 would take place, this second stage, if I might put it  
11 that way, shortly after the April 30th date?

12 MR. CAMPBELL: Well, what is contemplated  
13 in paragraph F is that by mid-May the Board would get a  
14 report on those items that are off the table, and at  
15 that time it would require parties to be very specific  
16 about what was left on the table. And because of the  
17 nature of the negotiating process, I think that at that  
18 point there could well be some changes from what was  
19 originally filed, and that shouldn't be leave required  
20 at that point in order to make those changes, it's  
21 subsequent to that that a leave requirement might be  
22 considered.

23 In my submission, the Board should be  
24 encouraging people, once all of these things are on the  
25 table, to work out what can be worked out and then be



1 very specific from amongst those things what each party  
2 is going to pursue. And so I don't necessarily  
3 disagree with the sentiment that my friend, Mr. Cosman,  
4 expresses. I just think we have got -- the purpose of  
5 the negotiation is to get through to the end point, and  
6 if the end point is a little different, that is a good  
7 thing, not a bad thing.

8 THE CHAIRMAN: Well, let's hear from some  
9 of the parties.

10 Ms. Swenarchuk?

11 MS. SWENARCHUK: Mr. Chairman, I think  
12 it's important to recall that although we have spent a  
13 very long time listening to one perspective on this  
14 question of timber management, that there are 50  
15 parties to the hearing and when parties in opposition  
16 begin their evidence, very different positions with  
17 regard to how our forests should be managed will be  
18 heard.

19 And one item that concerns me about the  
20 whole direction of this discussion is its departure  
21 from the Ministry case. And although on the one hand  
22 that is totally understandable given what we have heard  
23 to date, I simply want us to recall that very different  
24 proposals for timber management will be coming from  
25 some of the parties.

1                   THE CHAIRMAN: But why can't those be  
2       incorporated into suggested terms and conditions? In  
3       other words, suggested terms and conditions won't  
4       necessarily parrot, or just slightly amend, we suspect,  
5       positions put forward by the Ministry. There may be  
6       radical departures from what is put forward by the  
7       Ministry.

8                   MS. SWENARCHUK: And I think it's  
9       important to keep that in mind.

10                  THE CHAIRMAN: We are certainly aware of  
11       that.

12                  MS. SWENARCHUK: When it comes to a  
13       process of negotiation, I think it is important if  
14       these negotiations are going to be at all productive,  
15       for the parties to be able to start from a realistic  
16       basis, and, frankly, as I think back on my years as a  
17       labor negotiator, if I'm told that the position I put  
18       on the table to start with can only be amended with  
19       leave by someone else, then I'm in the position of  
20       having to file the strongest statement of my radical  
21       departure as possible.

22                  If, on the other hand, the Board assumes  
23       that all of us here approach the task with some sense  
24       of responsibility--

25                  THE CHAIRMAN: The Board would like to

1       assume that.

2                   MS. SWENARCHUK:  --and with some  
3       intention to shorten our own work on this matter to the  
4       greatest degree possible, then, of course, we are going  
5       to approach these negotiations with reasonable  
6       positions that represent the goals that we have here  
7       but that are susceptible to the changes that are  
8       necessitated by that position and by one other  
9       important factor which you have not yet taken into  
10      account, and that is, "Yes, we have heard and we are  
11      aware of the Ministry's case.  We have not heard and we  
12      are not aware of the Industry's case or any other  
13      parties in support who may come after them."

14                   So to attempt to lock into the  
15      negotiation process this kind of requirement, I must  
16      say causes me a great deal of concern and causes me to  
17      think that the process in itself will not be very  
18      productive because parties will go into it not in the  
19      best frame of mind and not with the best kind of  
20      working positions.

21                   So I would strongly urge the Board to  
22      retain that initial premise, which is that the draft  
23      conditions -- terms and conditions should be filed  
24      seriously, will, however, be draft.

25                   THE CHAIRMAN:  All right.  With that in



1 mind, Ms. Swenarchuk, how do you respond to Mr.  
2 Campbell's suggestion of this sort of two-stage  
3 process; going into the negotiations with serious draft  
4 terms and conditions but not necessarily fixed, and  
5 then after the negotiations coming out with a  
6 finalization, if we might call it that -- of those  
7 terms and conditions subject only then to possible  
8 change as a result of further evidence that comes in  
9 from the various parties and perhaps with leave of the  
10 Board? That is a middle ground to I think perhaps what  
11 you are suggesting.

12 MS. SWENARCHUK: My concern with the  
13 point at which the terms and conditions become fixed  
14 has to do primarily with the degree to which all the  
15 evidence on the other side has been heard. It appears  
16 from the timetable we are talking about, that that date  
17 would appear - if I understood Mr. Campbell correctly -  
18 around the middle or end of May at which point we would  
19 at least have certainly all the written material from  
20 the Ministry's case, if their evidence is not  
21 completed.

22 THE CHAIRMAN: You would have that before  
23 they start, effectively. Our order, I believe, was  
24 that all of the witness statements must be submitted  
25 before they started their case by the end of the

1 Ministry's case.

2 MS. SWENARCHUK: I have fewer concerns at  
3 that point, and at that point I want to consider a  
4 little further, but I won't state my objection so  
5 strongly.

6 ---Discussion off the record

7 MS. SWENARCHUK: Another element that we  
8 do want to recall to the Board's attention is, of  
9 course, the public component on the satellite hearings,  
10 and we, of course, must leave open the right of the  
11 participants of those hearings to put on the table  
12 anything that parties --

13 THE CHAIRMAN: No. We indicated that  
14 already, that certainly notwithstanding agreement is  
15 reached on certain issues, it is only binding, in  
16 effect, on the parties to that agreement; therefore, if  
17 any members of the public at any of the satellite  
18 locations raise something on one of those agreed issues  
19 and the Board is persuaded that what had been agreed to  
20 can no longer be sustained, the Board would simply, in  
21 fairness, open up that issue for discussion by all  
22 parties.

23 Now, we would hope that that would be  
24 kept to an absolute minimum. In other words,  
25 presumably, if most of the major parties to the hearing

1       who represent, I would suggest, most of the major  
2       interests, are in agreement, then it is likely that  
3       there wouldn't be very many of those issues that had  
4       been agreed to that would be subject to having to be  
5       dealt with as if there had been no agreement in the  
6       first place. But there may well be, and we are  
7       certainly cognizant of that and we'll keep that  
8       available to members of the public as an option.

9               MR. COSMAN: Mr. Chairman, there's been  
10       some discussion at cross-purpose with respect to the  
11       timing, because my discussion -- by submissions were  
12       aimed at the proposal that emanated from the Board.  
13       Mr. Campbell had some other time limits that resulted  
14       in April or May being the final date.

15               Let me put before you what I think is a  
16       reasonable proposal which might assist the process and  
17       might be the basis for discussion which combines the  
18       two.

19               THE CHAIRMAN: Very well.

20               MR. COSMAN: First of all, I'm leaving  
21       the January 30th date now, but that can be changed.  
22       And it's taking Mr. Campbell's suggestion of the  
23       two-stage process.

24               Let us say that the parties were required  
25       to file their draft terms and conditions by January



1 30th and the Board would expect them to be reasonable  
2 and serious positions.

3 Secondly, there would be, as you  
4 suggested, Mr. Chairman, a two-week period - that is  
5 again flexible - a two-week period of negotiation,  
6 because if there's any experience in the context of  
7 labor negotiations -- has been raised and there's  
8 inexperience with that. If you put the parties  
9 together for two weeks rather than having them running  
10 around and lead evidence at the time, you might get  
11 something done. Two-week period of negotiation to try  
12 to arrive at agreed upon terms and conditions and to  
13 arrive at differences.

14 At the end of that two-week period, the  
15 third step would kick in, and that is that the parties  
16 would -- the Board would have the parties' agreed upon  
17 terms and conditions. The Board would also have the  
18 final positions of the parties with respect to terms  
19 and conditions that they are proposing. And -- those  
20 would only be at stage three that that would be subject  
21 to leave, depending on the evidence, of course, later  
22 on this in hearing.

23 Before going into this process, as I say,  
24 the parties will have known the MNR case, they know  
25 their own case, they will have received the Industry

1 witness statements. That process will define the  
2 issues and will put us in a position when we call our  
3 evidence we'll know what we must in particular address  
4 our evidence to and could considerably shorten the  
5 Ministry -- Industry case.

6 MR. CAMPBELL: Mr. Chairman, if I could  
7 put some specific times on that, I would suggest that  
8 if there is going to be a two-week period it be the  
9 weeks -- I would suggest we perhaps advance the initial  
10 filing, as I suggested, to January 10th, and that the  
11 two-week period be February -- the weeks of February 19  
12 and 26th. That gives us enough time --

13 MR. MARTEL: Just for the negotiation?

14 MR. CAMPBELL: Well, that's for the  
15 intensive negotiation. I don't view that period of  
16 intensive negotiation as being the only time we are  
17 going to be talking to each other. I would expect, for  
18 instance, that we would be trying to initiate these  
19 discussions with MNR just as soon as we possibly can  
20 regardless of what the dates are. That is sort of  
21 bringing it down to a crunch in those dates, and  
22 presumably there would have been considerable work done  
23 ahead of those dates, hopefully.

24 I'm just anxious it not -- that if there  
25 is going to be that period specified, that once we are

1       into March we got all kinds of timing problems, and  
2       once this period of intensive negotiation is over there  
3       is a requirement, as we've outlined in the proposal,  
4       for each of us to get instructions from our respective  
5       clients, and there has to be time for that before we  
6       come back and report to the Board.

7               But subject to suggesting some specific  
8       dates, I think the approach Mr. Cosman has outlined is  
9       exactly in parallel with what I've been speaking to all  
10      along.

11             THE CHAIRMAN: Presumably, Mr. Campbell,  
12      this case hasn't just started. Presumably counsel have  
13      been advising clients as they go along and formulating  
14      their positions as they go along.

15             Now, surely, you may have to get formal  
16      ratification from your clients of the precise  
17      conditions you are going to put forward as your -- sort  
18      of finalized positions, but surely you would be  
19      receiving instructions as you go along as to what you  
20      can negotiate and what you can't, what positions you  
21      can take and what you can't.

22             MR. CAMPBELL: Of course, Mr. Chairman,  
23      that final step, though, for some parties, will take a  
24      little longer than for other parties and there has got  
25      to be some time period allowed for that. I think the



1 periods spoken to in proposal are reasonable.  
2 Mr. Freidin has suggested some extensions and I think  
3 they are quite reasonable given the number of people  
4 that --

5 THE CHAIRMAN: What's the date the Board  
6 ends up with having the positions of all the parties  
7 after the negotiations, after you've got your  
8 clients --

9 MR. CAMPBELL: I would recommend May  
10 15th, and that date would be substituted into  
11 paragraph F.

12 THE CHAIRMAN: Why would we need from May  
13 15th if the two weeks of negotiation are February 19th  
14 and 26? That brings you up to the 1st of March.

15 MR. CAMPBELL: At which point we have  
16 school break.

17 THE CHAIRMAN: But because there is a  
18 school break --

19 MR. CAMPBELL: There are some practical  
20 matters that come to bear on this, Mr. Chairman, and I  
21 think that it is important to have those final  
22 positions communicated with instructions prior to the  
23 Board -- prior to the date by which you were required  
24 to report to the Board.

25 Again, I think there is an opportunity

1       there that when each of us go for instructions on the  
2       final agreements there still needs to be a little bit  
3       of flexibility to go back and forth a bit to settle  
4       details, and that then gives two weeks for that purpose  
5       from the April 30th date.

6               MS. KOVEN: We've got nothing to speed up  
7       the hearing in terms of our most immediate concern, and  
8       that is getting the Industry's case done quickly as  
9       opposed to allowing it to drag on until -- this will  
10      just come after half the Ministry's case is in.

11             MR. FREIDIN: As I see these dates -- if  
12      in fact, we file these drafts terms and conditions  
13      sometime in the middle of January and we have this two  
14      weeks of negotiations immediately following the end of  
15      the Ministry's case and Dean Baskerville's examination,  
16      if the two weeks' negotiations achieves at least part  
17      of what it is intended, it seems to me that if we had  
18      perhaps two weeks after that two-week period to get  
19      final instructions, we would be able to file that.

20             Now, are we talking -- let's assume we  
21      started the negotiations in the middle of February. We  
22      are talking about this being finalized by the time of  
23      March break. And what I think it would result in, from  
24      Mr. Cosman's case, is that he might have to take two  
25      weeks of his case without having these terms and

1 conditions absolutely finalized, but he would be in a  
2 position where he saw their honest effort up front and  
3 gone through two weeks of discussion and had a pretty  
4 good idea of whether they were going to change.

5 THE CHAIRMAN: And would have the time  
6 available during the school break or two weeks as well  
7 to adjust his case.

8 MR. FREIDIN: Well, I don't think we  
9 want --

10 MR. MARTEL: On one hand you are asking  
11 to tighten it. You already asked that it be extended  
12 to April 30th. Mr. Campbell said we should submit by  
13 April 15th, but the negotiations, if I follow you, are  
14 going to be done by the end of February. And the  
15 question is why two and a half months later do you want  
16 to file?

17 MR. CAMPBELL: Let me back up. Our  
18 proposal originally did not include setting aside the  
19 two weeks for intensive negotiations. We have  
20 suggested specific dates for those, being the weeks of  
21 February 19th and 26th. If that is part of the Board's  
22 order, it is quite possible for -- certainly for us  
23 then to have instructions even allowing for March break  
24 by the end of March and to come back to the Board then  
25 on April 3rd.



1                   My concern is that whereas my client has  
2                   a proven capability of dealing with these matters  
3                   efficiently and quickly, there are other parties  
4                   represented here who have to go to Boards of Directors  
5                   for approval and who may not be quite in the same  
6                   position that we are in. If they raise no objections,  
7                   I have no problem with advancing the date.

8                   Our concern really was with respect to  
9                   other parties that might have problems coming back as  
10                  early as April 3rd. But April 3rd as -- and I like to  
11                  talk about specific dates -- and that would be a  
12                  specific date that certainly we could be ready to  
13                  proceed if the weeks of intensive discussion are set  
14                  aside as being February 19th and 26th.

15                  I also think it is very important for the  
16                  Board to state as early as possible what those weeks  
17                  will be because all counsel are busy and will want to  
18                  put aside that time in their calendar so as to give  
19                  this the maximum possible attention.

20                  THE CHAIRMAN: It would be the Board's  
21                  intention to issue a ruling and set out precisely what  
22                  is expected of the parties with all dates plugged in,  
23                  to the extent that we can.

24                  MR. FREIDIN: Mr. Chairman, if I just  
25                  might add, I think I initially said two weeks after

1 negotiations.

2 I think I'd like the suggestion being put  
3 forward by Mr. Campbell in terms of giving us until the  
4 end of the March break only in that the Ministry of  
5 course is going to have to look at the suggested terms  
6 and conditions, and it is the Ministry who is going to  
7 determine whether they are implementable. They are  
8 going to have to start looking at things like costs. I  
9 think they have to look at these from a little bit  
10 different perspective than others, and if, in fact,  
11 these negotiations do take place within a two-week  
12 period somewhere in February, then by extending the  
13 finalization of those terms and conditions until after  
14 the March break, immediately after the March break,  
15 assuming that is April the 3rd, that will probably give  
16 the Ministry sufficient time to deal with the proposal.

17 That appears to --

18 MR. CAMPBELL: Mr. Chairman, I've picked  
19 the April 3rd date, which allows one week after people  
20 get back from March break, depending on which March  
21 break you are in, and that is the reason for April 3rd,  
22 is to just give us a week to let the loose ends be  
23 tidied up.

24 THE CHAIRMAN: All right.

25 Do any other parties who have not yet

1 addressed this matter wish to speak?

2 Mr. Hunter?

3 MR. HUNTER: I think, Mr. Chairman, I'm  
4 going to approach this with a great deal of skepticism.  
5 Certainly I have a lot of sympathy with your need to  
6 truncate this hearing.

7 THE CHAIRMAN: Is your microphone on?  
8 Oh, you don't have one.

9 MR. HUNTER: I'm trying to speak up. I  
10 hope that I can be successful in that.

11 As you can well imagine, we will be  
12 extremely concerned with any prejudices that might flow  
13 to our client as a result of attempts to come up with  
14 alternative methods of dealing with this hearing other  
15 than in the fashion which we've known for the past year  
16 and a half or two years.

17 I'm concerned, for example, that the  
18 forest industry could be in a position to know all of  
19 our terms and conditions and then, for example, be in a  
20 position to focus or may focus their concerns on some  
21 of the points we may have. I can't expect that they  
22 would be met with any less concern about my clients'  
23 interests than, for example, the Ministry of Natural  
24 Resources. So I'm quite concerned about how they will  
25 use the process in terms of focusing on particular



1 issues that we might raise or might have concerns  
2 about.

3 The other concern I have is --

4 THE CHAIRMAN: But Mr. Hunter, will we  
5 not have your terms and conditions, your clients' terms  
6 and conditions, along with everybody else's, ahead of  
7 the Industry presenting their case?

8 MR. HUNTER: Yes, you will have that, but  
9 you won't have obviously all of the evidence that will  
10 accompany that. And in the negotiation process,  
11 presumably one would be bringing to bear a fairly broad  
12 range of evidence in terms of subsequent witness  
13 statements and the subsequent --

14 THE CHAIRMAN: That is true, Mr. Hunter,  
15 but is not the purpose of setting out these suggested  
16 conditions, putting out a bottom line position, "This  
17 is what your client wishes to see happen."

18 Now, obviously it has to be supported by  
19 some evidence, but we might add to a greater or lesser  
20 degree. It may be that some issues don't have to be  
21 supported by weeks and weeks of evidence. It may well  
22 be that some issues the Board would only require very  
23 minimal evidence on because it doesn't have a major  
24 problem with that particular issue. And the Board,  
25 hopefully, would be in a position to advise the parties

1 as we proceed as to some of the issues upon which it  
2 wishes to hear more evidence or where it feels the  
3 evidence is insufficient.

4 And all we are saying, is that if you  
5 were in a position, which I think you are, and you  
6 should be, to put forward your bottom line on various  
7 issues, then it is a matter for counsel to decide how  
8 much evidence they have to put in to support their  
9 positions, and in cases where the Board feels it has  
10 heard enough, it may well indicate that, or,  
11 alternatively, where the Board feels it has not got  
12 enough evidence before it, it would request more in the  
13 normal case.

14 MR. HUNTER: I think, Mr. Chairman, the  
15 only point I would make, I wanted to break my concern  
16 to you.

17 First of all, we'll obviously abide by  
18 whatever rulings you make with respect to this. Let me  
19 try to be candid.

20 We have attempted over the course of the  
21 last two or three years to negotiate agreements with  
22 the Ministry, and in virtually all circumstances there  
23 has been no agreement with the Ministry. Therefore, I  
24 ask you what do we do at the end of the day if after  
25 two weeks of negotiation there is no agreement with the

1 Ministry?

2 THE CHAIRMAN: Those issues would be put  
3 before the Board in the normal course and the Board  
4 would ultimately determine those issues.

5 Now, it may be that your clients'  
6 position on certain issues are incapable of being  
7 negotiated to the point of agreement. We would want an  
8 honest attempt on the part of all parties going into  
9 the negotiations to reach agreement, but it is quite  
10 obvious that in several cases, or in the case of  
11 several issues, there won't be agreement. That is  
12 obviously what this Board is here for. We are hearing  
13 not just one side of a case, we are hearing one side of  
14 a case put forward by the Ministry and the other  
15 perspectives put forward by all of the other interests  
16 involved, and we would arbitrate in terms of our  
17 decision where agreement could not be reached. We  
18 would be doing that in any event.

19 What we are trying to say is, let's get  
20 those areas off the table where there is, in fact,  
21 agreement. Why spend the time and the kind of expense  
22 this hearing is incurring on issues where the parties  
23 substantially are in agreement? Let's concentrate on  
24 those areas where the parties cannot reach agreement.  
25 And in the case of your clients, particularly, there



1       may be several of those areas.

2                   MR. HUNTER: I think, Mr. Chairman, I'm  
3 quite concerned about the fact that there is no - to my  
4 understanding - any real ability in this process to  
5 compel the parties to negotiate, and I'm very concerned  
6 that we will engage in a process which will be  
7 meaningless, which will take an extraordinary amount of  
8 time and at the end of the day be counterproductive.

9                   Then I just want to add, in that context,  
10 I am unclear as to how one would manage their case  
11 subsequent to those negotiations and how you will  
12 respond to areas of agreement. What would happen if  
13 you had an agreement between seven parties and you  
14 didn't have the eighth any more? What does that  
15 individual or what does that party have to do in terms  
16 of their case? What type of tremendous onus is now  
17 placed upon them to overcome, quote, unquote, "a  
18 negotiated deal"?

19                  THE CHAIRMAN: Presumably we wouldn't  
20 have to deal with the seven parties that reached  
21 agreement, per se. We may well have to deal with the  
22 party that has not reached agreement.

23                  MR. HUNTER: It is the lack of clarity  
24 both in terms of procedure and in terms of the evidence  
25 that would be required subsequent to this process that

1 I'm concerned about. But nonetheless, I will attempt  
2 to participate in a cooperative fashion, will support  
3 it. But, as I said, and for the record, I am extremely  
4 skeptical.

5 THE CHAIRMAN: I mean, this is attempted,  
6 Mr. Hunter, as we are all aware, certainly by the  
7 courts in several instances. It is not uncommon for  
8 the courts to send the parties out of the room and say,  
9 "Reach an agreement on this. Don't bother coming back  
10 until you've reached agreement." Now, that isn't  
11 always the case.

12 MR. HUNTER: I wish you could say that to  
13 us. I wish you had a hammer that, in fact, could force  
14 that type of approach.

15 THE CHAIRMAN: Well, whether we do or  
16 not, I don't want to comment at this point. We may not  
17 have all of those powers. But I would suggest to you,  
18 that even when the courts do it, they are often faced  
19 with the fact that agreement cannot be reached and,  
20 therefore, they perform their adjudicative function  
21 once the parties have returned and said, "We tried and  
22 we failed." And I would suggest, off the top of my  
23 head, that we are really in no different position than  
24 that.

25 MS. SWENARCHUK: If I could just note --

1 I'm not aware of any proceeding in which the courts  
2 have had before them the largest ministry of the  
3 government, province, plus one of the largest  
4 industries in the country and the diverse interests on  
5 the other side.

6 THE CHAIRMAN: And we don't expect for a  
7 minute, Ms. Swenarchuk, that the parties are going to,  
8 in this two weeks, arrive at agreement on all of the  
9 issues that we have heard for the last 17 months, and  
10 basically you will be able to come back to us and say,  
11 "We are pleased to report, Board, that you can go home  
12 in two or three days because we have reached agreement  
13 on almost everything." I mean, that is unlikely to be  
14 the case, in the Board's view.

15 MS. SWENARCHUK: Again, just for the  
16 record, I think Mr. Hunter has expressed concerns that  
17 my clients have as well about the process. Like him,  
18 we will participate in good faith, but we are concerned  
19 about the possibilities for agreement or non-agreement  
20 and the long-term implications.

21 MR. MARTEL: If there is no agreement on  
22 anything then we are going to have to hear everything;  
23 if there is agreement, then the areas we have agreement  
24 on, we just chuck that aside and we spend the rest of  
25 the time dealing on the areas where there is



1       disagreement.

2                       MS. SWENARCHUK: Agreed.

3                       THE CHAIRMAN: And to carry that one step  
4       further, where we do have the areas of disagreement,  
5       the Board will be insistent that we focus on those  
6       precise areas. We are not going to hear essentially  
7       elements of the case we've already heard. We want to  
8       really focus upon those differences. And although we  
9       have racked our brains within the last few weeks to try  
10      and come up with ways in which to focus these  
11      proceedings, the only viable way that we have really  
12      considered that it can be done in any meaningful  
13      fashion is to focus on the conditions of approval,  
14      because those should articulate your bottom line  
15      positions as to precisely where you disagree, precisely  
16      what you would like to see happen alternatively.

17                      And beyond that, unless parties can  
18      assist the Board, we don't see how you can focus beyond  
19      the measures that we have tried to implement to date,  
20      which is summarizing your positions in witness panels  
21      and statements of evidence. But, of course, the  
22      problem is, we end up with statements of evidence that  
23      exceed a thousand pages, are chock-full of a hundred  
24      issues, and we find it hard to believe that all hundred  
25      issues are in dispute. And this is the difficulty

1 facing the Board.

2 We don't want to hear everything where  
3 the parties are essentially in terms of some of the  
4 issues in agreement.

5 MR. HUNTER: Mr. Chairman, I'm concerned  
6 about the -- I don't understand the focus on the terms  
7 and the conditions. We are preparing our case to seek  
8 amendments to - whether we get them other not is  
9 another issue - to a Class EA document. You will be  
10 working with the Class EA document with the terms and  
11 conditions provided by the Ministry and with the Timber  
12 Management Guidelines, being the principal documents to  
13 which we'll be seeking amendments.

14 Am I correct in assuming that that is the  
15 focus that you are speaking about?

16 THE CHAIRMAN: Yes. We are using the  
17 term "terms and conditions". It is not precisely  
18 confined only to those things put forward by the  
19 Ministry. It certainly encompasses positions put  
20 forward by other parties to matters that may not have  
21 been addressed by the Ministry in terms of their case.

22 MR. HUNTER: But in terms of the  
23 Ministry's case we are principally looking at --  
24 obviously not all the evidence -- principally looking  
25 at Class EA document terms and conditions as provided

1 in the Timber Management Manual. Is that the principal  
2 area?

3 THE CHAIRMAN: Yes. As well as the  
4 Ministry's draft terms and conditions, which, in  
5 effect, we might put it this way, amend to some extent  
6 the positions that they put forward originally in the  
7 Class EA and some of the other documents themselves.  
8 Because those terms and conditions, which are  
9 formulated at some point after some of the evidence was  
10 in and some of the cross-examinations had taken place,  
11 assisted the Ministry in amending some of their  
12 original positions.

13 MR. CAMPBELL: Mr. Chairman, I have, as  
14 you know, undertaken to speak to this matter on behalf  
15 of Ms. Bair-Muirhead, who represents Treaty #3, and is  
16 not able to be here today. I spoke with her yesterday  
17 and would like to convey the following submissions to  
18 the Board as she gave them to me, and this is, of  
19 course, in respect of the proposals that are before  
20 you.

21 Ms. Bair-Muirhead has no representations  
22 regarding the proposals regarding the length of the  
23 hearing save that her client is prepared to take  
24 reasonable steps to isolate issues in contention, but  
25 in the interests of fairness, takes the position that

1       they should not be any more constrained in the  
2       presentation of evidence on behalf of Treaty #3 than  
3       the proponent has been in the presentation of its case.

4               There are other matters to be dealt with  
5       today on which I have other comments, but those were  
6       the submissions that I was asked to pass on to the  
7       Board on her behalf.

8               THE CHAIRMAN: Very well. The Board will  
9       take cognizance of those comments in its deliberations.

10              Any other parties wish to address the  
11       issues concerning the draft conditions of approval and  
12       the negotiations process that we've been discussing?  
13       Dr. Quinney?

14              DR. QUINNEY: The Ontario Federation of  
15       Anglers and Hunters wishes to support the Board's  
16       endeavours this morning, and, more specifically, in  
17       essence, we will support the Ministry of the  
18       Environment October 10 memorandum.

19              If I may add a couple of comments. We  
20       asked the Board to keep the January 30 date for  
21       submission of draft terms and conditions, and we  
22       support the notion of that date being followed by a  
23       period of intensive negotiation leading towards an end  
24       of March or early April submission of planning  
25       positions to the Board.



1           We ask that the January 30th date remain  
2       for these reasons: Clearly the parties are required in  
3       these hearings to do a number of tasks, if you like,  
4       simultaneously. Among them, cross-examinations,  
5       preparation of witnesses for our own cases, et cetera.

6           So in addition to terms and conditions  
7       which we know in the end of January, parties have much  
8       to do, Mr. Chairman. And in order to present  
9       reasonable and achievable terms and conditions to the  
10      Board, we would request that that January 30th date  
11      remain.

12           MR. CAMPBELL: Mr. Chairman, if I can  
13      just add something with respect to the end dates --  
14      having made submissions earlier about providing some  
15      room at the end of the process, and that being  
16      primarily aimed at concerns that I knew were extant  
17      with other parties, those other parties not having  
18      brought those concerns before you.

19           I want it clear that we are quite content  
20      and would encourage the Board to adopt the April 3rd  
21      date for submissions back to it and the February 19th  
22      two-week period for the intensive negotiations. I do  
23      not want my earlier remarks taken as providing any  
24      support that doesn't come from other parties for later  
25      dates. We are concerned to get people's attention and

1 the Board's attention as early as possible on the end  
2 of the process, as I have stated earlier in  
3 submissions, on behalf of the Ministry of Environment.

4 THE CHAIRMAN: Very well. Mr. Freidin?

5 MR. FREIDIN: Mr. Chairman, this might be  
6 an appropriate time for me to perhaps raise in a more  
7 formal way the suggestion I made at the end of the  
8 hearings last week, and that is that I believe that it  
9 will facilitate the negotiations and facilitate the  
10 ease with which the Board might be able to see the  
11 differences which exist between parties on the various  
12 issues.

13 If those people who file their draft  
14 terms and conditions follow as closely as possible the  
15 subject matters and the order of the subject matters as  
16 they are found in the Ministry's draft terms and  
17 conditions, that their submissions indicate --  
18 obviously if there is going to be disagreement between  
19 one of three, that obviously their term or condition  
20 would so state and would be clear what, in fact, they  
21 wanted the Board to impose as a different term and  
22 condition on that matter.

23 And under each subject matter, if  
24 something had not even been addressed by the Ministry  
25 that they wanted addressed, that they add under that

1 same heading what they would like to see as an  
2 additional term and condition, and that of course if  
3 there are subject matters which are not addressed at  
4 all by the Ministry in its draft terms and conditions,  
5 they would be free at the end to add new subject  
6 matters and, thereunder, new draft terms and  
7 conditions.

8 I just think that that will assist  
9 everybody who sits down at these negotiations and try  
10 to quickly at a quick glance see where the differences  
11 might be. If everyone takes it, does it in their own  
12 form, it will take a week to figure out what the  
13 differences are in relation to our first terms and  
14 conditions.

15 So I would like to see some sort of  
16 formalization, perhaps by way of an order, that that be  
17 a format which is agreeable to the Board and which the  
18 Board finds perhaps an acceptable way to at least try  
19 and have these negotiations proceed in an orderly  
20 fashion.

21 THE CHAIRMAN: Other parties may not  
22 agree.

23 Are there any submissions by any other  
24 party? Ms. Swenarchuk?

25 MS. SWENARCHUK: Mr. Chairman, I think we

1 can assume that all parties are going to attempt to  
2 draft terms and conditions that will maximize the  
3 opportunities of negotiations, but I want to refer  
4 again to what I said earlier today.

5 As you recall, we only heard one party  
6 and that substantially different approaches to timber  
7 management are to be heard from other parties and will  
8 be reflected in the draft terms and conditions.

9 THE CHAIRMAN: No. But can't --

10 MS. SWENARCHUK: I would certainly commit  
11 us to providing terms and conditions in a manner that  
12 is easily comparable to what the Ministry has set out.  
13 I do not consider, however, that our approach  
14 necessarily should be restricted in the way that  
15 Mr. Freidin has suggested to outline their subject  
16 matters, et cetera. I don't think that would be very  
17 productive in the negotiation process.

18 THE CHAIRMAN: Well, having said that,  
19 the Board feels there is some merit in at least trying  
20 to identify, if possible, the generic topics which are  
21 to be covered by the draft conditions in a manner which  
22 are easily comparable one to the other. And surely --  
23 and we are finding this, to some extent, with the  
24 statements of issue that have been filed by the various  
25 parties. We attempted to categorize into four



1 categories the types of responses that we wanted, yet  
2 some of the parties deal with it quite differently from  
3 the other and it does make it difficult for the Board  
4 the try and compare the various positions to see what  
5 their positions are in fact about. So --

6 MS. SWENARCHUK: As I indicated,  
7 Mr. Chairman, we certainly will attempt to put these  
8 conditions in a form that is easily comparable to the  
9 one set that we have seen to date, but it may not be  
10 possible to do it with the degree of conformity that  
11 Mr. Freidin has suggested.

12 THE CHAIRMAN: And I think the Board  
13 recognizes that, and when we formulate our ruling in  
14 this regard we'll certainly take those comments into  
15 account, but perhaps some kind of rough but flexible  
16 format should be established in terms of the ruling so  
17 that all of the parties conform to the extent that they  
18 can, so that it will be easier for the parties, when  
19 sitting down to both negotiations, and for the Board to  
20 review them subsequent to the negotiations, to be able  
21 to see where the parties differ.

22 MS. SWENARCHUK: I, frankly, don't think  
23 we can proceed much further than to say that in some  
24 way the terms and conditions should be comparable. As  
25 I recall, we are approaching this process without all

1 the supporting evidence of the various cases, and to  
2 further restrict the actual statements in terms and  
3 conditions themselves I think would be, frankly, unfair  
4 to the parties.

5 THE CHAIRMAN: Okay. We'll take into  
6 account your comments when we are formulating our  
7 ruling.

8 Are there any other comments on that  
9 suggestion by Mr. Freidin? Very well.

10 Now, we would like to get to some of  
11 the other aspects of the proposal other than just the  
12 negotiations, and that is the section of  
13 Mr. Campbell's proposal dealing with the filing of the  
14 statements of issues, or the non-filing of the  
15 statement of issues as the case may be, set out in  
16 paragraphs A, B and C -- sorry, in B and C.

17 MR. COSMAN: Mr. Chairman, unless Mr.  
18 Campbell has anything additional to add, I will be  
19 pleased to make my submissions on that.

20 First of all, with respect to B and C, we  
21 support a strengthened scoping process and have nothing  
22 further to add other than we support the proposal as  
23 set out in B and C.

24 I would like to address you with respect  
25 to both examination-in-chief and cross-examination,

1       which isn't on the list but is really tied in with A,  
2       which is a proposed voluntary restriction on  
3       examination-in-chief.

4               Earlier in this proceeding - I can't  
5       remember at what panel we were at in the Ministry of  
6       Natural Resources' evidence, the Board heard legal  
7       argument on why it should not change the rules  
8       mid-stream re the presentation of evidence. I believe  
9       the Ministry of the Environment made that submission,  
10      as we did, and other parties.

11              The MNR has presented its case without  
12      limits on its examination-in-chief and the suggestion  
13      that was made to you is that such a limitation should  
14      not be imposed by the Board on the other parties. The  
15      Board's order at the conclusion of argument and after  
16      some reflection, was that it could not restrict  
17      examination-in-chief. And in my submission that was  
18      the correct legal result.

19              The proposal is not so much that the  
20      Board change that order, but for the Board request a  
21      voluntary limit, as Mr. Campbell has put it, and I  
22      would like to speak to that.

23              Mr. Chairman, we believe, in the  
24      presentation of our case, that we can present our  
25      evidence per panel on the basis of the equivalent -- or

1 under the equivalent of two full days. We can live  
2 with that. And we would undertake to use our very best  
3 efforts to achieve that. We have lived up, as the  
4 Board will recognize, to our own submissions in the  
5 past as to the length of the evidence that -- or the  
6 length of cross-examination, and we submit we will be  
7 able to live up to that.

8 We believe that the scoping process, in  
9 particular, has further strengthened, and the process  
10 of having the terms and conditions determined as much  
11 as possible before we call our case, will put us in a  
12 position again of being able to limit the amount of  
13 time needed to call oral evidence, because the extent  
14 to which we know the issues we have to address, we are,  
15 therefore, able to fashion our oral testimony to meet  
16 those matters that are in dispute.

17 We would prefer, going back to Mr.  
18 Campbell's suggestion, an earlier date than April 3rd,  
19 but we realize some of the practical difficulties with  
20 the March break because, frankly, from a 'best  
21 position' perspective on behalf of the Board in timing,  
22 if that process were completed before we started our  
23 case, it would considerably shorten our case.

24 But even if it isn't, as I understand it,  
25 if April 3rd is the date, given that our case would



1       probably start around the beginning of March, you are  
2       talking only about two weeks in which we wouldn't know  
3       what those positions were, and we might have some  
4       indication from the process.

5               So that with respect to  
6       examination-in-chief, it is our submission for legal  
7       reasons, as enunciated earlier in the submissions which  
8       I won't repeat, the Board should not make an order; the  
9       Board should request the parties to live up to that  
10      voluntary limit which has been imposed. And on behalf  
11      of my clients, and subject to any additional issues  
12      that may arise in scoping or any particular  
13      interventions by the Board on a matter of importance,  
14      we expect to be able to live up to a two-day,  
15      equivalent of a two-day limit per panel.

16             With respect to cross-examination, the  
17      Board has quite rightly pointed out that the greatest  
18      amount of time to date has been in cross-examination,  
19      and I want to ask the Board to revisit the legal  
20      framework within which parties do cross-examine in this  
21      proceeding and similar proceedings.

22             Two sections of the Statutory Powers  
23      Procedures Act are important, Section 10(c) and 23(ii).  
24      10(c) says that:

25             "A party to a proceedings may at a

1                   hearing conduct cross-examination of  
2                   witnesses at a hearing."

3                   But it's not absolute. There's a limit  
4                   right in the statute.

5                   "Reasonably required for a full and fair  
6                   disclosure of the facts in relation to  
7                   which they have given evidence."

8                   That is set out in 10(c) of the Statutory  
9                   Powers Procedures Act.

10                  Under Section 23, which deals with the  
11                  abuse of process powers that the Board has, 23(ii)  
12                  says:

13                  "A tribunal may reasonably limit further  
14                  cross-examination of a witness where it  
15                  is satisfied that the cross-examination  
16                  of the witness has been sufficient to  
17                  disclose fully and fairly the facts in  
18                  relation to which he has given evidence."

19                  So it's quite clear, Mr. Chairman, that  
20                  there is a power within the Board itself to prevent an  
21                  abuse of its process. I would not support - and I  
22                  don't know if anyone has urged an arbitrary limit on  
23                  cross-examination - but there is this power which you  
24                  have to limit cross-examination where the matter has  
25                  been fully and fairly dealt with in the

1 cross-examination.

2 In that respect, Mr. Chairman, I submit  
3 to you that your suggestion, which you put out for the  
4 parties' consideration last week, is entirely  
5 appropriate. And that is, that there be lead counsel  
6 for parties who were in opposition to a particular  
7 matter. This is done in every court of the land. No  
8 court would stand by and allow ten parties to  
9 cross-examine from their own perspective; in fact, this  
10 Board, even at the Halton hearing, required parties to  
11 get together and have lead counsel.

12 Part of the problem, of course, is that  
13 counsel are not always here. We have heard time and  
14 time again repetition of the same subject matter. And  
15 I would suggest that it would be, at your suggestion,  
16 entirely reasonable that the parties be directed to get  
17 together and to the extent that they do not co-operate,  
18 or would not co-operate, that you use your power under  
19 the Act to prevent the abuse of process. This doesn't  
20 mean that you restrict unreasonably a party's right to  
21 test the evidence, but it's to do exactly what every  
22 court and every other Board in this land has the right  
23 to do when parties are repetitive and address again and  
24 again the same subject matter.

25 THE CHAIRMAN: The Board indicated last

1 week that it views its powers under the Environmental  
2 Assessment Act, Sections 18(15), as a provision that  
3 perhaps specifically deals with your last submission as  
4 well as Section 18(12), where the Board may determine  
5 its own practice and procedure in relation to the  
6 hearings. Then, of course, there are all the  
7 provisions you've referred to already in the Statutory  
8 Powers Procedures Act.

9 This Board has been concerned for some  
10 time that, albeit the interests of the parties are  
11 somewhat different, there are, nevertheless, issues  
12 that have arisen to date before this Board which are  
13 being addressed by several of the parties in  
14 cross-examination to a varying degree. We can think of  
15 issues like traceability, which is one we mentioned  
16 last week, like the issue of quantification, which is  
17 an issue that has arisen and been addressed by several  
18 parties, albeit in some cases from different  
19 perspectives.

20 But it seems to the Board that on some  
21 of those issues the parties should be encouraged, and  
22 if encouragement does not necessarily produce an  
23 appropriate result required in some cases, to take  
24 specific issues and have a lead counsel deal with those  
25 issues so that we don't get a repetition throughout the



1 proceedings.

2 Now, we could probably rule out the  
3 repetition on the grounds of the provisions of the  
4 Statutory Powers Procedures Act to say we are not going  
5 to allow cross-examination because we find it  
6 repetitive. But we want the parties to know that there  
7 are other provisions within our own statute, within the  
8 Environmental Assessment Act, that also we feel assist  
9 the Board in ensuring that there is not repetition of  
10 that type.

11 MR. CAMPBELL: Mr. Chairman, if I could  
12 just make a short submission on that.

13 I think it is important that the Board  
14 make full use of its powers to avoid repetitive  
15 cross-examination. I think it is somewhat unfair to  
16 characterize that as occurring simply because an issue  
17 is addressed by more than one counsel. It may be that  
18 the different parties have quite different positions on  
19 that issue and are cross-examining on that issue for  
20 completely different purposes.

21 I would like to make it clear that in our  
22 submission that is not repetitive cross-examination  
23 unless, of course, the precise same questions are being  
24 asked. The Board, in dealing with that, has to, in my  
25 submission, take into account the different positions

1 of the party on that issue, not the simple fact that  
2 the issue is being addressed by more than one person.

3 THE CHAIRMAN: Mr. Campbell, that may  
4 well be the case, but the Board feels there is in some  
5 cases, opportunity for the parties in advance of  
6 cross-examining, to get together and discuss what their  
7 various differences might be or might not be with  
8 respect to an issue which concerns more than one party.  
9 And in those cases, there might well be a commonality  
10 of position that can then be articulated and put  
11 forward by one counsel in cross-examination. It may  
12 not be possible to do that.

13 MR. CAMPBELL: And to some extent, Mr.  
14 Chairman, it has been happening already. I would just  
15 like to be clear, however, that it's the repetitive  
16 nature of questioning that the Board should be  
17 concerned with, not the fact that the same issue has to  
18 be addressed, because positions can be quite different  
19 on the same issue, and that was my simple point. I  
20 fully agree to the extent counsel can both be  
21 encouraged to and actually achieve efficiency in  
22 addressing issues, that should certainly happen.

23 MS. SWENARCHUK: Mr. Chairman, I would  
24 just like to second Mr. Campbell's submissions on this  
25 point.

1                   I think you saw an example last week with  
2       Mr. Edwards of cross-examination being shortened  
3       because one has covered certain issues. I would also  
4       like to underline that these discussions do occur  
5       between counsel on every panel, and I'm not aware to  
6       what extent the Board considers that the  
7       cross-examination has been repetitive, but certainly  
8       I'm aware of issues repeatedly in which one counsel's  
9       cross-examination has covered the issue, has been  
10      planned to or has and has shortened subsequent  
11      submissions.

12                   THE CHAIRMAN: Well, we certainly  
13      appreciate the efforts of counsel to date. So don't  
14      misinterpret the Board's remarks.

15                   But when we are faced with a bottom line  
16      of five years, which is the way the numbers work out,  
17      we have to explore any and all possibilities to go  
18      further than perhaps what has occurred to date, because  
19      if what you are telling me, Ms. Swenarchuk, is true,  
20      then perhaps the efforts of counsel to this point in  
21      time have shortened the hearing from six years down to  
22      five years. And for that, we are indeed grateful.

23                   But we have a long way to go, as far as  
24      we are concerned. So we really have to look and  
25      explore every possible alternative because, in our

1 view, it is not in the public interest at all for a  
2 hearing, even of this complexity, to occupy five years.

3 MR. HUNTER: I was wondering, Mr.  
4 Chairman, if we could take comfort from Mr. Cosman's  
5 comments that Mr. Freidin will be lead counsel for most  
6 of these matters?

7 MR. COSMAN: I might take comfort, Mr.  
8 Chairman, if I understood that, but since I don't, I  
9 won't make any submissions.

10 MR. FREIDIN: I agree.

11 THE CHAIRMAN: Okay. Why don't we  
12 move on.

13 Firstly, with respect to the tightening  
14 up of the scoping procedures. Do the parties before us  
15 essentially - we've had some representations from a  
16 couple of the parties - agree with the submissions put  
17 forward by Mr. Campbell to the extent that if  
18 statements of issues are not submitted, that party  
19 would be restricted to cross-examining only with leave  
20 and presumably with good reason, for not having  
21 submitted statements of issue?

22 MS. SWENARCHUK: As we indicated last  
23 week, Mr. Chairman, we are in agreement with  
24 Mr. Campbell's submissions.

25 THE CHAIRMAN: Very well.



1                   Now, the other matter the Board would  
2     like to deal with is the suggestion put forward  
3     subsequently by Ms. Swenarchuk, and that is considering  
4     a change in hearing location.

5                   MR. FREIDIN: Mr. Chairman, I was just  
6     wondering if perhaps before we do that, I was  
7     wondering -- I wasn't sure from your comments of last  
8     week whether the Board was considering procedural  
9     initiatives over and above what was being proposed by  
10    the Ministry of the Environment and being agreed to by  
11    counsel to the extent indicated this morning, and if  
12    the Board is considering some additional measures, I  
13    would like an opportunity to, in a very brief way,  
14    address the extent to which I believe, on behalf of my  
15    client, that the proposed procedures, dealing primarily  
16    with terms and conditions, will address, or hopefully  
17    it will address the concern of the Board and therefore  
18    the need at this particular time for the Board to, in  
19    fact, consider additional procedural measures over and  
20    above what has been proposed by the Ministry of  
21    Environment.

22                  THE CHAIRMAN: Well, to answer your  
23    question, yes, the Board is at this time contemplating  
24    a, perhaps, more extensive package of procedural  
25    initiatives than what is proposed by Mr. Campbell, and

1 would be considering as well the proposal for changing  
2 the location of the hearing. We want to hear some  
3 submissions on that today, but this is the manner in  
4 which the Board is proposing to proceed.

5 We would come back to the parties with a  
6 proposed order in terms of new procedural initiatives  
7 and would invite comment from counsel on those  
8 proposals once you have seen the Board's entire  
9 package. And we would also, at that time, invite  
10 Mr. Marshall to comment on them as well, if he so  
11 chooses. And after this one further session, we would  
12 then finalize that order and that presumably would  
13 govern the proceedings for the immediate future.

14 But we do want to explore, I think, some  
15 of the positions of counsel to the extent that those  
16 positions can be made known at this time with respect  
17 to a possible change of venue for part of the  
18 proceedings, because this is a suggestion that was put  
19 forward that might in fact go some way towards  
20 shortening the overall length of the hearing  
21 particularly if the Board, under those circumstances,  
22 moved to a four-day-a-week format.

23 MR. FREIDIN: If I might, then, just very  
24 briefly make two observations, again, going to the  
25 types of additional matters, leaving aside for a moment

1 the change of venue of the hearing.

2 As you are aware, it was the Ministry of  
3 Natural Resources who proposed this whole idea of  
4 having terms and conditions at the beginning of the  
5 case as opposed to the end of case, which is normally  
6 when you hear about these matters. And it was the  
7 Ministry's suggestion specifically to try and scope the  
8 evidence so that the Board and everybody would know  
9 what, in fact, it was that everybody wanted.

10 So I would perhaps just look back to last  
11 week and Mr. Edwards' cross-examination. I didn't  
12 speak to him and ask him whether his cross-examination  
13 went from three days to one day because of his scoping  
14 of his cross-examination by dealing with terms or  
15 conditions or not, but I would assume that part of that  
16 statement was in fact the result of doing just that.

17 And it appears to me that one of the  
18 problems that the Board has had dealing with this whole  
19 issue of limiting cross-examination has been an  
20 inability to, in fact, indicate what was or what was  
21 not relevant or what was in issue and what was not.  
22 And it was the Ministry's hope, and I believe that if  
23 these terms and conditions in fact are submitted in the  
24 way that we all hope they will be and this negotiating  
25 process ends up with some final "terms and conditions"

1 at the end of process in late March early April, that  
2 that very identification of "terms and conditions" will  
3 give the Board the ability to say to counsel that this  
4 does not appear to be relevant, it's not in anybody's  
5 terms or conditions; in fact, it's not in yours. And  
6 it seems to me that is really the difficulty that the  
7 Board probably has found itself in from day one.

8 And I just make these few remarks for the  
9 Board's consideration when you think about how  
10 necessary will it be for you, at this particular point  
11 in time, to do more than what has been set out in this  
12 proposal.

13 I think those are my only comments.

14 MS. SWENARCHUK: Mr. Chairman, I'm sorry  
15 to disagree with my friend, but in my observations  
16 during the hearing... First of all, the Board has had  
17 no difficulty in identifying relevancy and irrelevancy.  
18 But as I observed it, the course of both direct  
19 evidence and cross-examination, the question has been  
20 not that irrelevant matters have been raised in either  
21 context, but rather the question of whether too much  
22 evidence has been presented, whether in direct or in  
23 cross-examination.

24 And, again, surely, when we consider the  
25 impact the terms and conditions are to make, we must



1 consider that behind each term and condition may lie,  
2 as in the Ministry's terms and conditions, a wealth of  
3 evidence. But, fundamentally, I must disagree. I  
4 don't think the Board has had any difficulty in  
5 identifying whether matters were irrelevant or  
6 irrelevant.

7 THE CHAIRMAN: Well, I think the Board,  
8 frankly, will be in a better position from now on to  
9 determine how much evidence it does in fact require to  
10 support a particular position. It has before it the  
11 Ministry's case and the cross-examinations of each of  
12 the parties on that case, and it should be in a  
13 position when it receives the direct evidence and the  
14 witness statements of the parties in opposition, or the  
15 Industry, to indicate in terms of cross-examination on  
16 those statements how much further evidence or how much  
17 evidence it needs to support the propositions put  
18 forward to a greater degree than it has been able to do  
19 so to date.

20 I don't think anyone can argue at this  
21 point in time that they don't know the case that they  
22 are facing, they don't know what the Ministry's  
23 proposal is, and, to some extent, the Ministry knows  
24 which areas of its proposals are likely to come under  
25 attack when we get to the other side of the case. They

1 have been able to ascertain part of that, not only  
2 through the statements of issues put forward, but  
3 through the cross-examinations. And the Board will  
4 endeavor from now on to deal with questions of  
5 sufficiency of evidence to a greater degree than it  
6 has.

7 The Board does agree with you, Ms.  
8 Swenarchuk, that to a large extent matters brought  
9 before the Board to date could not be considered  
10 irrelevant to the undertaking. It is a very broad,  
11 complex undertaking and it covers many, many facets and  
12 aspects of management techniques and procedures and  
13 documentation concerning that.

14 The Board does not feel, however, that  
15 the parties will, if we adopt additional procedures, be  
16 treated unfairly because the Ministry has put forward  
17 its case in a manner in which it has to date. All  
18 parties have been afforded an adequate and fair  
19 opportunity to cross-examine. And to that extent, they  
20 have not been restricted in virtually any way and they  
21 won't be restricted necessarily in putting forth their  
22 side of the case provided it's focused, and I think  
23 what we are all dealing with in this session is, "How  
24 do we focus the rest of the case?"

25 It's obvious to the Board that we have to

1 make some changes at this point in time, because to go  
2 on the predictions or projections by the parties as to  
3 how long it will take to finish this case is simply  
4 unacceptable and we want to institute these procedures  
5 at this point in time so that all parties in opposition  
6 and the Industry in support, and other parties in  
7 support, are treated equally from this point on.

8 MS. SWENARCHUK: I'm not disagreeing,  
9 Mr. Chairman. I'm merely disagreeing with your concept  
10 of relevancy.

11 MR. FREIDIN: Perhaps one other comment  
12 Mr. Chairman.

13 In terms of your deliberations regarding  
14 Mr. Cosman's suggestions about no limitations on time  
15 for direct and his indication that two days he felt  
16 would be appropriate, I would just like to make the  
17 observation that the two days, based on my look at the  
18 numbers in the past, appears to be a reasonable one  
19 without any terms or conditions to assist the Ministry  
20 in terms of focusing its evidence-in-chief, and with  
21 what I believe was the Ministry's responsibility to, in  
22 fact, start from scratch on many issues, some of them  
23 being very technical, for the purposes of edifying  
24 parties and the Board; that the Ministry's average per  
25 panel in terms of evidence-in-chief was just over three

1 days per panel.

2 I think the limits --

3 THE CHAIRMAN: There's no sense,  
4 Mr. Freidin, frankly, in reviewing what has occurred in  
5 the past. We are moving ahead from this point on and  
6 looking to the future. What happened in the past  
7 happened, and perhaps if we started this case all over  
8 again we would institute other procedural measures  
9 right from the outset, and I can assure you that some  
10 of those procedural measures would likely involve your  
11 client.

12 MR. CAMPBELL: Mr. Chairman, if I could  
13 speak to the matter of the location of the hearing.

14 I understand from my friend, Mr. Cosman,  
15 that he does not expect to be a position to obtain  
16 instructions on this matter until October 26, and given  
17 that difficulty and given that the Board intends to put  
18 forward some additional measures of its own for  
19 consideration of counsel, I was wondering whether it  
20 wouldn't be worthwhile to fix a date for consideration  
21 of those matters, that date being Hallowe'en - and  
22 costumes would be optional of course - but if we could  
23 bring those matters back to the Board on October 31st  
24 as a fixed date again so that counsel can -- and  
25 parties have a particular day on which they can plan to



1 attend.

2 MS. SWENARCHUK: In Toronto,  
3 Mr. Campbell?

4 MR. CAMPBELL: And I'm assuming in doing  
5 that the Board's draft order would be out at some point  
6 next week. Mr. Cosman could get instructions on  
7 location and we could then deal with the locational  
8 issue in a more efficient way with all parties having  
9 instructions and we could deal with submissions on the  
10 Board's proposals. I simply, for the sake of  
11 efficiency today, think that might be worthwhile.

12 MR. COSMAN: Mr. Chairman, if I may speak  
13 to that?

14 As you know, the matter of location has  
15 been visited twice already by the Board with full  
16 submission. I'm not certainly going to repeat any of  
17 that here today. Ms. Swenarchuk made a proposal last  
18 week that perhaps the matter should be revisited. Our  
19 clients are made up of 84 companies from small,  
20 family-owned sawmill operators in the north, through to  
21 large world-scale pulp and paper mill companies, and  
22 their boards - the Ontario Forest Industry Association  
23 and the Ontario Lumber Manufacturer's Association are  
24 two separate entities - their boards are going to be  
25 meeting -- I think the last meeting is October 26.

1 I will be in a position to revisit the  
2 matter with the boards at their meetings and would  
3 propose to come back to you afterwards with not only  
4 our submissions with respect to the matter of locale,  
5 but also other aspects of the organization of our case  
6 which we hope will assist in expediting the process.

7 THE CHAIRMAN: And those boards of  
8 directors' meetings will occur by October 26th?

9 MR. COSMAN: Yes, Mr. Chairman.

10 THE CHAIRMAN: All right. I think the  
11 Board would be agreeable to leaving that one issue  
12 until after the Board has put forward its proposals and  
13 discussion and all of the proposals can take place at  
14 the same time.

15 We should, however, just discuss a couple  
16 of aspects of a proposed relocation so that all of the  
17 parties can at least visit with their clients some of  
18 the areas that should be up for discussion, so that we  
19 are all clear on what we will be discussing in case the  
20 Board does adopt a relocation decision.

21 As we mentioned last week, several of the  
22 parties have chosen of their own free will to present  
23 their case in Toronto, that is Forests for Tomorrow and  
24 the Federation of Anglers and Hunters. Two or three of  
25 the parties have chosen other specific locations.

1                   Mr. Hunter, you have chosen, I believe,  
2           Sioux Lookout, and I believe Ms. Bair-Muirhead has also  
3           chosen--

4                   MR. CAMPBELL: Kenora.

5                   THE CHAIRMAN: Sorry. Has chosen Kenora.

6                   NOTO had chosen Thunder Bay, and we  
7           believe Northwatch had chosen North Bay. And to our  
8           knowledge, there are no further indications from  
9           parties as to where they wanted to present their case.  
10          Of course, the Industry had indicated they were going  
11          to present their case in Thunder Bay as well.

12                   We then have the other satellite  
13          locations which have been outlined in previous Board  
14          orders, and excluding Sioux Lookout, Thunder Bay, North  
15          Bay and Toronto.

16                   MS. SWENARCHUK: And Kenora.

17                   THE CHAIRMAN: And Kenora.

18                   MS. SWENARCHUK: And Dryden.

19                   THE CHAIRMAN: And Dryden, which we have  
20          already covered, that would still leave, I believe,  
21          eight or nine - we haven't got the exact list in front  
22          of us - locations which we have undertaken to visit at  
23          some point in these proceedings.

24                   As we indicated, and our experience shows  
25          us with the Dryden visit, each location, providing

1       there is no party there that wants to present an  
2       extensive submission to the Board, will take at least  
3       one week, and that includes travel time and the Board  
4       sitting over two days, morning and evening sessions.

5               Now, when we get to, for instance, North  
6       Bay, we may be spending more than two days depending on  
7       the particular party which is to make a more extensive  
8       submission, and I believe Red Lake we have an  
9       indication that the one-industry town party wants to  
10      make a submission there. And that may take us into a  
11      longer period of time than two days.

12             But in any event, we have at least nine  
13      weeks of satellite hearings which will be, for all  
14      intents and purposes, throughout Northern Ontario. The  
15      Board would not, in a relocation proposal, consider  
16      changing a location for the presentation by both  
17      Mr. Hunter's clients, Mr. Riley's clients or Mr.  
18      Colborne's clients. So that the native interest that  
19      want to address the Board would have the option of  
20      presenting their evidence in Sioux Lookout, Kenora  
21      and/or Thunder Bay.

22             MR. HUNTER: Mr. Chairman, I might add if  
23      our direct evidence were to occur in the late fall or  
24      winter, we might reconsider Sioux Lookout simply  
25      because the difficulties of travel are so great, and I



1 would not want to... I'm simply saying that is open.

2 THE CHAIRMAN: Would it be elsewhere in  
3 Northern Ontario?

4 MR. HUNTER: Oh, yes, Thunder Bay.

5 THE CHAIRMAN: Thunder Bay, then. Very  
6 well.

7 So that really the major parties that  
8 would be dislocated from their original choices should  
9 we adopt a change in location, would be the Industry  
10 and the Northern Ontario Tourist Association,  
11 essentially.

12 MR. COSMAN: You would reserve your  
13 position on that, Mr. Chairman, until after you've  
14 heard submissions?

15 THE CHAIRMAN: Yes, yes. We are  
16 indicating that when we are looking at a relocation in  
17 terms of further submissions, there are certain parties  
18 which would not, in effect, be affected by a  
19 relocation; namely, the native groups and of course all  
20 of the parties who want to address the Board in  
21 satellite locations. We would not depart from our  
22 previous rulings in that regard.

23 If we were to move to Toronto with  
24 respect to the Industry's case, which has been  
25 estimated to take anywhere from three to four months,

1 if I'm correct, Mr. Cosman?

2 MR. COSMAN: Yes, with cross-examination.

3 THE CHAIRMAN: With cross-examination,  
4 and NOTO's case, which I believe has been estimated to  
5 take approximately one- to one-and-a-half-months, and  
6 move to a four-day-a-week hearing schedule, then there  
7 be would an attendant decrease in the overall time left  
8 to complete this hearing.

9 It is difficult in the Board's view to  
10 increase to a four-day-a-week schedule holding the  
11 hearing outside of Toronto. There is travel time  
12 involved. The Board is presently sitting hours of 8:30  
13 in the morning until 5:00, 5:30 in the evening on a  
14 three-day-a-week schedule and it would be difficult to  
15 increase from that, bearing in mind that the parties,  
16 at the present time, have to travel in the evenings  
17 Monday night to get to Thunder Bay and don't arrive  
18 home in Toronto if they are travelling from the south  
19 until late Thursday evenings.

20 Were we to hold the hearing in Toronto  
21 with most of the parties being in Toronto and most of  
22 the counsel involved and most, we would suggest, the  
23 expert witnesses involved, it might well be viable to  
24 move to a four-day-a-week schedule and thus pick up  
25 possibly six hours of evidence a week over an extended

1 period of time.

2 So those are the considerations you might  
3 discuss with your clients, and the Board will reserve  
4 formal submissions on that until after the 26th.

5 What date was that you were suggesting,  
6 Mr. Campbell?

7 MR. CAMPBELL: The 31st.

8 THE CHAIRMAN: October 31st.

9 MR. CAMPBELL: That is the first hearing  
10 day of that week.

11 THE CHAIRMAN: All right.

12 Ms. Swenarchuk?

13 MS. SWENARCHUK: A couple of comments.  
14 First, would that be in Toronto or Thunder Bay?

15 THE CHAIRMAN: The further discussion?

16 MS. SWENARCHUK: I would be requesting  
17 that it be held here, if possible.

18 MR. CASSIDY: 31st is a Tuesday.

19 MS. BLASTORAH: Mr. Chairman, I just  
20 point out from Mr. Colborne's information, the 26th,  
21 which I think is the date of the Board -- is a date  
22 that there is no hearing. That is a Thursday. So the  
23 next available date would be the 31st, which is the  
24 Tuesday.

25 THE CHAIRMAN: All right. The Board

1 feels that the further discussion may not take more  
2 than a couple of hours, and, therefore, we would not  
3 want to lose an additional hearing day. So why don't  
4 we address it up in Thunder Bay on the Tuesday, October  
5 31st, first thing in the morning, and then proceed with  
6 whatever point we are in the evidence immediately  
7 following.

8 MR. FREIDIN: So that will be both the  
9 procedural matters and the possible move or change of  
10 venue?

11 THE CHAIRMAN: That's right. We'll be  
12 hearing your final submissions on the Board's  
13 proposals, we'll be hearing submissions on the possible  
14 relocation of the hearing, and then we will go directly  
15 into the remaining evidence that we have scheduled for  
16 that day. The Board will then, over the next two or  
17 three days, finalize its ruling and issue it with no  
18 further discussion.

19 MS. SWENARCHUK: My other question would  
20 be with regard to, for how many parties can hearing  
21 time be saved by holding it in Toronto, whether the  
22 counsel for the Ministry of the Environment could tell  
23 us where, if they present evidence, it will be  
24 presented?

25 MR. CAMPBELL: I don't have instructions



1 on that matter.

2 THE CHAIRMAN: Well, again, if any  
3 submissions want to be made with respect to the  
4 possibility of changing location, they should be made  
5 on October 31st.

6 MR. CAMPBELL: We have suggested in our  
7 correspondence to the Board, which I believe should  
8 have been copied to parties, that while we are not yet  
9 in a position to make a determination as to whether the  
10 Ministry wishes to call evidence on October 5th, 1988,  
11 we advised the Board that taking into account these  
12 circumstances and the convenience of all of the parties  
13 participating in the hearing in an ongoing basis, the  
14 Ministry suggests that the Board schedule its  
15 appearance for Toronto, although we went on in the  
16 correspondence to point out that any appearance at this  
17 point is highly speculative and the Ministry is quite  
18 prepared to consider any alternative location which  
19 might more easily accommodate the Board's hearing  
20 arrangements. And those instructions have not changed.

21 MS. SWENARCHUK: My last point, Mr.  
22 Chairman, is that as I looked again at the numbers, six  
23 hours-plus to be gained by an extra day would be gained  
24 if we sat shorter hours than we sit in Thunder Bay, and  
25 it would be my submission that we could continue to sit

1 longer hours than is the norm and perhaps pick up the  
2 equivalent of a full day there, seven and a half hours.

3 THE CHAIRMAN: Well, again, we'll take  
4 that in account, but a four-day week with the amount of  
5 evidence that we are having put before us is, I would  
6 suggest, very onerous for the Board to absorb as well.  
7 You've got to realize that we have additional things to  
8 do other than just preside during the day, as do  
9 counsel, especially when we are talking over a period  
10 of time of four or five years.

11 MR. COSMAN: Mr. Chairman, do I  
12 understand correctly that you are going to, on the  
13 basis of submissions today, make a proposal or put  
14 forward a tentative proposal, and, if so, when would we  
15 receive that?

16 THE CHAIRMAN: We obviously will have to  
17 work on it. We would suggest that you probably will  
18 receive it before we rise by the end of next week,  
19 before the 26th, probably by the 25th. Okay? And  
20 you'll have it in front of you when you go to your  
21 clients in terms of the board of directors' meetings,  
22 and then we'll deal with the further matters on October  
23 31st.

24 I think at this time the Board is going  
25 to --

1 MS. KOVEN: Just one question,  
2 Mr. Chairman.

3 Mr. Campbell where did you get this  
4 voluntary limit of one-and-a-half days per panel?  
5 Obviously you and Mr. Cosman don't see eye to eye on  
6 that. Do any of the other parties agree on the  
7 one-and-a-half day limit?

8 MR. CAMPBELL: The one-and-a-half days is  
9 suggested simply on the basis of my experience in  
10 calling evidence in large cases and cases which often  
11 involve highly technical matters. It certainly has  
12 been my experience that if we can't explain what we are  
13 doing in a day and a half then we probably can't  
14 explain it at all, and there is no more rationale to it  
15 than that. These are calling witness panels and it is  
16 simply a matter of judgment upon which every counsel in  
17 this room will have some different opinion.

18 MS. KOVEN: So it doesn't mean anything.  
19 No one else has agreed to a day-and-a-half voluntary  
20 limit?

21 MS. SWENARCHUK: We agreed last week.

22 MS. KOVEN: You did?

23 MR. CAMPBELL: Yes. I believe there are  
24 some parties are in agreement, but it was not put  
25 forward as anything in the original instance as

1 anything other than reflecting our suggestion based  
2 both on my experience in calling cases and the  
3 Ministry's experience, of course, generally, in  
4 participating in Environmental Assessment Board  
5 hearings.

6 THE CHAIRMAN: And bearing in mind that  
7 we have witness statements filed?

8 MR. CAMPBELL: Well, exactly.

9 THE CHAIRMAN: We are talking about some  
10 very extensive evidence before the Board, although it  
11 may not be in the form of oral presentation.

12 MR. HUNTER: Ms. Koven, I didn't comment  
13 simply because last September we had suggested a  
14 maximum of two days, so, therefore, we are in agreement  
15 with what Mr. Campbell --

16 MR. MARTEL: Did you also not suggest  
17 last fall a reduction in -- not a reduction, but a  
18 tightening up of cross-examination?

19 MR. HUNTER: Yes, I was prepared --

20 MR. MARTEL: Because as I look at the  
21 figures, if Mr. Freidin is correct, 45 days roughly for  
22 the Ministry's case, average three days per panel.  
23 Today is day 144, which means we have had twice as much  
24 time for cross-examination as direct evidence and yet  
25 we don't want to deal with that issue veryd...



1 MS. SWENARCHUK: That sounds surprising,  
2 it's my suggestion, Mr. Martel, given the number of  
3 parties involved in the hearing.

4 MR. COSMAN: Mr. Chairman, just with  
5 respect to two days, if I can assist in response to Mr.  
6 Hunter's question.

7 It's, of course, as Mr. Campbell says, a  
8 reasonable estimate under the circumstances given the  
9 complexities of the case and the fact that there are  
10 five witnesses say on an average per panel for us.  
11 What I indicated to you was that I believe using our  
12 best efforts we could complete our evidence-  
13 in-chief per panel on the basis of, at most, a two full  
14 equivalent day of testimony which, given the nature of  
15 the case and the complexities, is not by any means  
16 irresponsible or lengthy.

17 THE CHAIRMAN: Well, it is doubtful that  
18 the Board could, under any circumstances, shorten it  
19 below two days to anything meaningful in any event, so  
20 we save a half a day. What does a half day mean over  
21 four years?

22 MR. COSMAN: Mr. Chairman, we hope that  
23 we will be one-day-and-a-half and, in some cases, less  
24 if the scoping proceedings and terms and conditions  
25 process works.

1                   MR. HUNTER: I think, Mr. Chairman, if I  
2                   might, with respect to Mr. Martel's comment? I think  
3                   my comment to Mr. Cosman and Mr. Freidin is that you  
4                   shouldn't assume that because there are several parties  
5                   adverse that they have a common interest, if there is  
6                   necessarily a common thread that runs between  
7                   everything that is their concern no more so than  
8                   perhaps there is between the forest industry and the  
9                   Ministry.

10                   You have several parties who I do think  
11                   have co-operated substantially. There has been  
12                   discussion between them and quite often attempts not to  
13                   repeat work that others have done and attempting to  
14                   respect the legitimate differences between those  
15                   parties. So I am not very comfortable with the  
16                   suggestion that somehow it is those parties who are  
17                   involved in cross-examination who have, per se, caused  
18                   the extensive course of this hearing.

19                   THE CHAIRMAN: I don't think the Board is  
20                   suggesting that. We are just suggesting we, as a  
21                   Board, think we are facing a problem that this hearing  
22                   is projected to take far longer than we think is  
23                   necessary for the Board to arrive at an informed  
24                   decision. Therefore, we are looking at all ways we  
25                   can.

1 MR. HUNTER: I just thought we could  
2 clear the air on that issue.

3 THE CHAIRMAN: Very well.

4 All right. I think we are going to take a  
5 half hour recess at this time. We will come back and  
6 deal with the remaining two issues. I think, unless  
7 the parties object, we might try and finish everything  
8 off before we break for a lunch hour and then just  
9 adjourn for the day as opposed to breaking for lunch  
10 and having to come back in the afternoon.

11 So we will return perhaps at 12:00  
12 o'clock and we'll deal with the possibility of how we  
13 might treat an additional plan being put before the  
14 Board, if that is going to be the Ministry's option.

15 MR. FREIDIN: My submissions will be  
16 extremely short on that.

17 THE CHAIRMAN: Okay. Then we'll deal  
18 with the rescoping of Panel 16. Thank you.

19 ---Recess at 11:40 a.m.

20 ---On resuming at 12:14 p.m.

21 THE CHAIRMAN: Very well, Mr. Freidin.  
22 Perhaps we'll now turn to the issue regarding the  
23 possibility of you putting in as an example an  
24 additional plan or parts thereof.

25 MR. FREIDIN: Okay.

1           The issue arose last week as a result of  
2           some concern regarding the evidence about the level of  
3           documentation, the type of documentation in relation to  
4           area concerning planning.

5           Your comments, Mr. Chairman, and the  
6           transcript basically indicated that you wanted us to  
7           advise today whether in fact the Ministry was going to  
8           advise there was a such a plan or parts of a plan that  
9           the Ministry wished to put before the Board. I took it  
10          from your comments that you were basically saying it  
11          was the Ministry's case and the Ministry is going to  
12          have to live or die by what they do or do not put in as  
13          evidence.

14                 THE CHAIRMAN: That is correct.

15                 MR. FREIDIN: All right. Having a  
16          correct understanding of that comment, I would like to  
17          advise that the Ministry will be filing further  
18          documentation; that we will do so by December the 15th,  
19          1989; that we are not sure of the form that that will  
20          take; in other words, whether it will be another  
21          complete plan, whether it will be an area concerning a  
22          package of a plan, whether in fact it might be excerpts  
23          from a number of different plans. It will be, in fact,  
24          what we believe will hopefully address the concern  
25          about the documentation issue as it was raised last



1 week.

2 Now, in terms of the date, December the  
3 15th, 1989, I think that probably indicates to you,  
4 Mr. Chairman, that the Ministry would like to accept or  
5 adopt the suggestion that you made last week, and that  
6 was basically that rather than file this document as  
7 part of Panel 15 and have more evidence-in-chief and  
8 more cross-examination, that we would file this  
9 documentation, that other parties would be able to deal  
10 with that documentation in their own case in terms of  
11 indicating their agreement or their criticisms of it,  
12 or whatever, and that the Ministry would be able to  
13 deal with matters raised there through reply evidence.

14 So we accept that suggestion. We think  
15 it's a method of, in fact, addressing one of the other  
16 concerns that the Board has, and that is of moving  
17 things along. I think it's a procedure which I think  
18 is fair to the other parties and should not be  
19 prejudicial to anybody.

20 Those are my submissions.

21 MR. CAMPBELL: Mr. Chairman, just by way  
22 of clarification. I take it from that, that in  
23 addressing it in reply, Mr. Freidin is using reply with  
24 the usual limitations that are expected --

25 THE CHAIRMAN: Solely restricted, I

1 think, to what is addressed by the other parties in  
2 terms of their cases to that plan; in other words, we  
3 are not opening up reply, Mr. Freidin, to your  
4 revisiting your whole case. It would be solely for the  
5 purpose of allowing you an opportunity to respond to  
6 other parties' submissions concerning this additional  
7 information.

8 MR. FREIDIN: Yes. And I would expect,  
9 Mr. Chairman, that when we file that additional  
10 information we could file something which would  
11 indicate to you what it is you are looking at. Subject  
12 to that then, I see no problem.

13 THE CHAIRMAN: Well, it remains to be  
14 seen in terms of what you are going to file because of  
15 course we don't have it in front of us. But the Board  
16 wanted to avoid, if at all possible, treating this  
17 additional information in the fashion that we have  
18 treated the rest of your case; in other words, by  
19 putting it in by direct, having cross-examination and  
20 reply. We would like to move along at this stage and  
21 we would like the parties to look at this further  
22 evidence in terms of their own case. And they will  
23 have several months, really, before they have to deal  
24 with any issues raised by this further documentation  
25 and should be, in the Board's view, able to incorporate

1       it within their own case.

2                   MR. FREIDIN: That is why I basically  
3       agreed, I indicated I don't think it followed the  
4       Board's suggestion with respect to that.

5                   THE CHAIRMAN: Okay. Let's hear from the  
6       parties. There may be not agreement by all parties.

7                   Dr. Quinney?

8                   DR. QUINNEY: Excuse me, Mr. Chairman.

9                   Unfortunately, the Ontario Federation of  
10       Hunters and Anglers wasn't present last week in Thunder  
11       Bay and those transcripts are not as yet available.  
12       Could I ask for further clarification or a more lengthy  
13       explanation of exactly what is taking place here? Am I  
14       to understand that MNR is now -- there is an  
15       undertaking by MNR to deliver certain information with  
16       regards to a specific question that was raised last  
17       Wednesday?

18                   THE CHAIRMAN: The Board suggested, after  
19       hearing some of the cross-examination relative to the  
20       Red Lake plan, that if there was another plan or plans  
21       out there that had been prepared utilizing the planning  
22       process to the extent that it been developed that is  
23       before us, that better illustrates how that planning  
24       process with an example works, that perhaps it would be  
25       better to put that further information before the

1 Board, because there was some concerns that the Red  
2 Lake plan that was put before the Board had been one of  
3 the first plans formulated using the new process and  
4 had been put together by personnel who had not had the  
5 advantage of training sessions or being walked through  
6 the various guidelines, et cetera. And that what we  
7 were seeing as an example perhaps didn't represent what  
8 in fact is occurring out there today in other units.

9 We put it up to the Ministry, or we put  
10 the suggestion to the Ministry, that they might wish,  
11 and the Board might find valuable, some additional  
12 information, except that we didn't want to treat it in  
13 the same way as the Red Lake plan. What we are not  
14 looking for particularly is another seven volumes of  
15 plan and to go through it meticulously to the extent  
16 that we've gone through the Red Lake plan.

17 What we are suggesting, Dr. Quinney, is  
18 that when this information is filed, the parties would  
19 deal with any concerns they have about it in the course  
20 of their own case, and then the Ministry would be  
21 allowed an opportunity to reply directly to matters  
22 raised concerning this new information.

23 DR. QUINNEY: I understand, Mr. Chairman.  
24 In fact that is a concern that has been shared by our  
25 Federation. And in fact, in a supplementary



1. interrogatory, Panel 15 supplementary interrogatory  
2 from our Federation to the Ministry of Natural  
3 Resources, our supplementary Question No. 2 read:

4 "Please provide the Timber Management  
5 plan that best represents the current TMP  
6 process on an FMA agreement forest, and  
7 that includes the treatment of diverse  
8 wildlife interests such as endangered  
9 species and sensitive areas regarding  
10 moose."

11 Now, we have a three-part question. That  
12 was the first part.

13 The answer to that first part of the  
14 question with reference to the boreal forest provided  
15 by MNR was that the Lac Seul Forest Management Plan  
16 would provide the example. So I'm just a little  
17 confused that just as the Board has asked MNR the  
18 question, so in fact had our Federation, and we had  
19 done it by way of a supplementary interrogatory, and  
20 the answer they provided was the Lac Seul plan.

21 THE CHAIRMAN: But that is not the one  
22 that was presented to us.

23 MR. FREIDIN: No. This was an  
24 interrogatory that was asked very recently in the  
25 process, and I'm not sure of the specific question or

1       why it was answered in a specific way. I wasn't  
2       involved in the -- I've been sort of absent for the  
3       interrogatory process, but, yes, the Lac Seul plan has,  
4       in fact, been made available to the parties. In fact,  
5       Dr. Quinney is arranging to look at it further I think  
6       this evening. So it's not as if questions have not  
7       arisen through interrogatories about the examples of  
8       this or that. If we look at -- and if they have, then  
9       this is one example where a specific plan was in fact  
10      raised - pardon me - provided.

11               THE CHAIRMAN: Let's just say this, and  
12      perhaps we can curtail this discussion.

13               This is one of those occasions where the  
14      Board has in fact indicated, if it exists, a preference  
15      for additional information. In other words, you put  
16      forward the Red Lake plan, we expect the parties to  
17      cross-examine on the Red Lake plan and do with it  
18      whatever you wish to do, but we have asked, is there  
19      any other information that represents, by way of  
20      example, what this new planning process entails? And  
21      we are giving the Ministry an opportunity to put  
22      forward something else, if in fact something else  
23      exists and if in fact they feel that they don't want to  
24      rely totally on the Red Lake plan.

25               We are not as interested, quite frankly,

1 in the adversarial points that might or might not be  
2 scored by the various parties in terms of what the  
3 Ministry put forward in the first instance, if that  
4 doesn't in fact represent what is occurring  
5 subsequently.

6 We are interested in what is going on out  
7 there and how this planning process is being applied,  
8 and if there is a better example out there we would  
9 like it to be brought in front of the Board, and that  
10 is what we have requested and the Ministry, it's up to  
11 them to respond in whatever fashion they feel is  
12 appropriate to that request.

13 We are just suggesting that should that  
14 request be responded to by the Ministry by providing  
15 more and additional information, how can we handle,  
16 from an evidentiary point of view, that new  
17 information? And our suggestion last week was to  
18 handle it through the parties' own cases as opposed to  
19 the normal fashion, because we are at a stage now where  
20 we would like to move on, completing Panel 15 and  
21 moving on to 16 and 17 and getting to Dean Baskerville,  
22 who is committed, you are aware, to the first week of  
23 December.

24 DR. QUINNEY: I agree, Mr. Chairman. I'm  
25 just unclear why, when you raised the question with MNR

1 last Wednesday, they didn't provide with you the same  
2 answer they provided us?

3 THE CHAIRMAN: Well, they hadn't provided  
4 us with any answer until this morning, in which case  
5 they are indicating that they are going to provide  
6 further documentation by December 15th. I don't know.  
7 Maybe they will provide the Lac Seul plan. I have no  
8 idea.

9 MR. FREIDIN: That's entirely a  
10 possibility, Mr. Chairman.

11 MS. SWENARCHUK: Mr. Chairman, I'm trying  
12 to restrain myself from recapitulating - recapping  
13 rather - the incredible, in my view, inconsistencies in  
14 the Ministry's approach to this question.

15 I just want to underline, however, one  
16 issue, and that is, that in our view filing the  
17 excerpts of numerous plans with the Board would be a  
18 method that would result in - I don't mean this in a  
19 deliberate sense - but what amounts to a kind of  
20 misrepresentation of the fundamental issues to us. I'm  
21 not suggesting for that purpose, but its effect would  
22 be that.

23 The advantage, and in my view, the  
24 irreplaceable advantage of examining the entire plan,  
25 is that it is only by examining an entire plan that we



1 can see the extent to which timber management activity  
2 and all the other resource activity of that piece of  
3 land are or are not integrated in a meaningful way.  
4 And that is the only way that we can see the extent  
5 to which, both at the decision-making level -- our  
6 concern last week, as I said repeatedly, was not just  
7 with documentation, our concern is with the level of  
8 decision-making. It is only by examining the entire  
9 plan for any area that one can examine the  
10 decision-making on all of those various resources.

11 And in our view, merely filing  
12 documentation from various plans will tell us nothing  
13 more than, this is a form of documentation on a  
14 particular issue, areas of concern which we find  
15 acceptable. That, in our view, does not at all address  
16 the deficiencies in the Ministry's case caused by what  
17 has happened with their position on the Red Lake plan,  
18 nor does it assist the rest of us, and the Board of  
19 course, which is the primary concern, with the extent  
20 to which these timber management plans in fact address  
21 and satisfactorily resolve all the issues involved.

22 In our view, therefore, frankly, we would  
23 object to the filing of further information in the form  
24 of excerpts from various plans.

25 Further to what Dr. Quinney has said, if

1 the Ministry has committed itself a second time, this  
2 time for the Lac Seul plan, then perhaps we should all  
3 be looking at that. I was not aware that that plan in  
4 its entirety had been made available in the Thunder Bay  
5 reading room. I'm glad to know that.

6 MR. FREIDIN: Mr. Chairman, my response  
7 is --

8 MS. SWENARCHUK: Could I complete?

9 MR. FREIDIN: I'm sorry. I thought you  
10 had finished.

11 MS. SWENARCHUK: If the Board accepts the  
12 Ministry's suggestion that excerpts from various plans  
13 can be filed, the Board has placed on all the other  
14 parties compounding the expense caused to us already by  
15 what has happened to the Red Lake plan, the expense of  
16 going out and analyzing in total each of those plans  
17 and, in our view, this is an unacceptable onus placed  
18 on us. In another forum I would be arguing for costs  
19 for what we have thrown away given the Red Lake  
20 situation. But I'm attempting to state it moderately.  
21 In our view it is totally unacceptable for our costs to  
22 be magnified by the --

23 THE CHAIRMAN: We don't want to interrupt  
24 you, but I think we can shorten that as far as your  
25 objection goes.

1           The Board has listened carefully to what  
2     you have said and we have, in fact, discussed similar  
3     things ourselves and we are in total agreement, that if  
4     the Ministry is going to produce another plan, it  
5     should be another plan. We are dealing with a complete  
6     planning process relative to various measures of units  
7     and, accordingly, it serves little purpose to pull out  
8     of one plan something that you feel you've done well  
9     and pull out of another plan something else you feel  
10    you've done well when the remainder of those two  
11    individual plans may be deficient in some way.

12           So that if you are going to provide an  
13    additional example, it should be another plan in its  
14    entirety although - and the Board wants to stress  
15    this - there is no necessary expectation on the part of  
16    the Board that the entire plan has to be dealt with by  
17    the parties, per se. It may turn out that you have to  
18    deal with several issues from various parts of the  
19    plan. We are not necessarily suggesting that it just  
20    be confined only, for instance, to an area of consumer  
21    packaging.

22           But, again, we'll leave it to the  
23    Ministry to put in the documentation concerning a  
24    separate plan, if that is what you choose to do, and  
25    the parties can address its deficiencies during their

1 own case with the Ministry having the right of reply.

2 MR. FREIDIN: Mr. Chairman, the only  
3 observation I would make is that if the Ministry then  
4 is to submit an entire plan to address the concerns of  
5 Ms. Swenarchuk's client, that it might very well be  
6 necessary - and I don't say that it has to be the  
7 case - but it might be necessary to, in fact, submit  
8 just that, the entire plan, whether it's three books,  
9 seven books or twenty books. I only say that because  
10 of your earlier comment about it might not be necessary  
11 to file all the books.

12 THE CHAIRMAN: No, no. No, I'm not  
13 suggesting it is not necessary to file all the books.  
14 If you are going to put in another plan by way of an  
15 example, the entire plan must be before the parties and  
16 should be filed. Whether all parts of that plan have  
17 to be addressed orally in terms of the parties'  
18 individual cases, is the matter to which the Board was  
19 referring.

20 MR. FREIDIN: Thank you.

21 THE CHAIRMAN: Any further discussion,  
22 Mr. Hunter?

23 MR. HUNTER: Yes, Mr. Chairman. I'm  
24 going to have to do some work, but I really fail to  
25 understand why the Ministry ought not to be required to



1 submit that plan in direct evidence with their  
2 witnesses? I cannot think of an area or a concern in  
3 which the very credibility of the planning process is  
4 in such state. Those plans comprise a series of  
5 numbers or maps. They don't identify or detail out how  
6 the decisions have been made. What is the process that  
7 was --

8 THE CHAIRMAN: That is part of what this  
9 Board is looking at. How are these decisions made and  
10 how are they documented?

11 MR. HUNTER: But what I fail to  
12 understand, and correct me if I'm wrong, but I would  
13 have thought that it is so fundamental that we be  
14 allowed to cross-examine MNR on that particular -- that  
15 is so fundamental that we be allowed to cross-examine  
16 the Ministry on that plan.

17 They have proposed something and they  
18 have said, "This is Swiss cheese." Now they are saying  
19 it isn't. You are now saying from the point of view of  
20 the Board and, in fairness, they ought to be allowed to  
21 come back again to the well and present something to  
22 you which demonstrates that they can do it in a better  
23 or more efficient way, whatever the value is that you  
24 are putting on that evidence.

25 But notwithstanding that, notwithstanding

1 the fact that perhaps Mr. Swenarchuk and myself would  
2 agree to that, it seems to be eminently reasonable to  
3 say they ought to be put under cross-examination with  
4 respect to that plan because it might be found to be as  
5 failing as the other one.

6 DR. QUINNEY: I will just reiterate that  
7 was the precise intention of our supplementary  
8 interrogatory in calling for a plan that was using the  
9 current planning process. MNR had told us, okay, the  
10 Red Lake plan is somewhat out of date. So we asked:  
11 Give us one that is using the current system. They  
12 told us, okay, it's the Lac Seul plan. Now, it looks  
13 like it may very well be a third one. It just doesn't  
14 seem to me appropriate that an entirely new third plan  
15 be introduced some time in December.

16 MS. SWENARCHUK: Mr. Chairman, we agree  
17 with Mr. Hunter with regard to the need for evidence to  
18 cross-examine on any future plan.

19 THE CHAIRMAN: Put it this way: Would  
20 the parties be agreeable to fixing some kind of  
21 limitations on the time required to go through a second  
22 plan example, both in direct and in cross-examination?

23 MR. HUNTER: Mr. Chairman, before I  
24 answer that, is it possible, pursuant to your powers,  
25 for you to compel a plan to be introduced, as you are

1 bringing Dean Baskerville? Can you deal with it in a  
2 context of the evidence that you will be -- you are  
3 saying, sir -- I'm just asking the question. Do you  
4 compel the Lac Seul plan to be --

5 THE CHAIRMAN: Well, what's the point?

6 Surely the parties, to a large extent,  
7 should be permitted to present their case as they see  
8 fit. Now, in areas where we see that what has been  
9 presented hasn't necessarily addressed some of our  
10 concerns, we are then making a suggestion, particularly  
11 in this case because of the timing, because the Red  
12 Lake plan was in '86 just as the new planning process  
13 was being introduced, et cetera, but perhaps there is a  
14 better example.

15 But leaving it up to the Ministry to  
16 determine whether or not they want to present a better  
17 example. For all we know one may not exist. They may  
18 want to rely on the Red Lake plan as being the example  
19 that they want to leave before the Board without adding  
20 anything additional.

21 I don't think the Board should get into  
22 the business of ordering the parties to produce  
23 specific evidence unless we were assured that that  
24 specific evidence will answer a very specific  
25 deficiency, and we don't know that at this point in

1 time.

2 MR. FREIDIN: I think the Board is taking  
3 the proper course. It's indicated it's concerned about  
4 an issue and has indicated to the proponent that it has  
5 that concern, and I think your observation the other  
6 day was correct.

7 THE CHAIRMAN: The Ministry might take  
8 the position at end of it that we are going to ride  
9 with what we've got, in which case we'll have to deal  
10 with it at the end of the case on the basis of the  
11 evidence in front of us.

12 Dean Baskerville, if I might suggest,  
13 Mr. Hunter, was an entirely different case. Dean  
14 Baskerville conducted an audit on some of the  
15 activities that are before the Board, has been referred  
16 to by numerous parties more than a thousand times, I  
17 would suggest, in the transcripts, and we had suggested  
18 right from the beginning that surely some party is  
19 going to want to call this individual, particularly to  
20 ascertain what he means, rather than everybody  
21 speculating on what he means in terms of what is said  
22 in the report. And since nobody did or volunteered to  
23 do so, the Board took it upon themselves to call that  
24 particular witness.

25 I would suggest that is a special case.



1                   MR. HUNTER: I accept that. I was simply  
2                   trying to respond, sir, to your concern that you would  
3                   be provided with the best information, and I was trying  
4                   to answer my very basic concern that the fundamental  
5                   credibility of the Ministry in relationship to those  
6                   planning processes be put before you through  
7                   cross-examination. And I thought perhaps that --

8                   THE CHAIRMAN: Okay, but going further  
9                   from our earlier position to Ms. Swenarchuk's comments  
10                  and your own.

11                  Would counsel for the parties be prepared  
12                  to agree to some reasonable time limit on presenting  
13                  that new evidence? Again, we are in the overall  
14                  interests of expediting this hearing. We have already  
15                  had one plan dealt with at length. We are in the  
16                  middle of it at the moment. And we are talking five or  
17                  six weeks' cross-examination by the time we are  
18                  finished with the Red Lake effort. We are not  
19                  convinced we want to go through another five or six  
20                  weeks.

21                  MS. SWENARCHUK: Mr. Chairman, most of  
22                  that cross-examination is not necessarily on the plan  
23                  of the cross-examination that Mr. Lindgren and I did.  
24                  Half was related to that plan, half was related to the  
25                  approved planning process in general.

1 THE CHAIRMAN: Yes. In fairness, that is  
2 correct. But what I am saying is we spent a  
3 considerable time on the Red Lake plan. If we are  
4 going to introduce a new plan we would like to put some  
5 reasonable time limits on dealing with that evidence,  
6 and, again, forcing the parties by doing so to focus-in  
7 on those areas with which they have some real problem.

8 MR. FREIDIN: Mr. Chairman, if I might  
9 respond, again, by going back to what you said the  
10 other day: it's the Ministry's case. And I won't  
11 repeat the comments I made last week but only to refer  
12 to them to refresh your memory, and that was, the  
13 Ministry's position was they could cross-examine on the  
14 Red Lake plan and point out as many deficiencies as  
15 they wanted, I think, and probably put up another two  
16 or three plans and they could do the same. So it  
17 doesn't make any difference whether they are showing up  
18 deficiencies as they see it through one example or five  
19 examples.

20 So I don't believe we have to get into a  
21 situation where we have to, again, take the time to  
22 present a plan, have it in direct and then  
23 cross-examine on it, and I don't think that Mr.  
24 Quinney, or Dr. Quinney's client, will in any way be  
25 restricted to in fact cross-examining on answers that

1 he received to interrogatories, and if he had to ask an  
2 interrogatory in relation to a plan, whether it  
3 demonstrated X, Y or Z, and an answer was given, then  
4 he can use those interrogatories in the usual fashion.

5 I don't see we need to develop another  
6 special procedural mechanism to deal with the issue  
7 which was raised by the Board. Again, I would say the  
8 suggestion made by the Board the other day in terms of  
9 how to deal with the matter is one that is sufficient  
10 and it's not prejudicial.

11 THE CHAIRMAN: Mr. Campbell?

12 MR. CAMPBELL: Mr. Chairman, I have no  
13 particular submissions to make on how the plan is dealt  
14 with in terms of whether it ought to be presented in  
15 evidence and subject to cross-examination as part of  
16 its filing.

17 I would say that if the Board accepts the  
18 submissions of Ms. Swenarchuk and Mr. Hunter in that  
19 regard, there is virtually no point in our proceeding  
20 with our cross-examination at this time on Panel 15.  
21 The nature of our cross-examination is such that you  
22 might as well save yourself the time on the first  
23 go-round and we would do it on the second go-round, the  
24 whole thing for Panel 15.

25 Secondly -- now, that is subject to, I

1       guess, a few of the witnesses appearing on the next  
2       panel, which might be a logistics problem. I just  
3       think it creates tremendous problems for our particular  
4       cross-examination, which has not yet occurred.

5               That said, we'll do what is necessary to  
6       accommodate you, whatever ruling the Board makes. The  
7       only other matter I would raise is that in considering  
8       this matter, the Board should bear in mind that there  
9       is no magic that the Board has in terms of production  
10      of these plans in that, that is certainly not the only  
11      mechanism by which other examples are available to the  
12      parties.

13             As I understand it, all of these  
14      documents from the minute they are produced as draft  
15      plans are public documents, and whereas, yes, it may be  
16      onerous to go through one or two to develop the points  
17      that one wishes to make in one's own case, it is not as  
18      if these plans are unavailable except through  
19      production and filing in this hearing. So that to the  
20      extent people want to use other examples in their  
21      evidence, the documents are public documents and they  
22      are perfectly free to do so.

23             I'm very sensitive in saying all of that  
24      to the fact that they are all large documents and  
25      analyzing any one of them, let me tell you, is a



1 considerable amount of work. But it's not as if other  
2 examples aren't otherwise available to parties.

3 THE CHAIRMAN: Well, Mr. Campbell, the  
4 Board has to look at the practicalities of the  
5 situation and the resources available to the various  
6 parties. And a lot of these plans can't be examined  
7 without the use of expert assistance on the part of  
8 some of these parties and for them to go out there on a  
9 fishing expedition of whatever plans may be available,  
10 the Board feels places untenable pressure on limited  
11 resources.

12 MS. SWENARCHUK: But I also underline,  
13 Mr. Chairman.--

14 THE CHAIRMAN: Excuse us for one moment.  
15 ---Discussion off the record

16 MR. CAMPBELL: Mr. Chairman, I should  
17 point out that in making these submissions I'm not  
18 suggesting that there be nothing filed at all. MNR has  
19 the choice before it to put something in to demonstrate  
20 what it thinks is an acceptable product or a good  
21 product or its best product or whatever it wants to  
22 say, and it is important, I think, to understand what  
23 product it is that exactly MNR says is acceptable under  
24 this planning process.

25 So I don't want any of my remarks to be

1 taken as denegrating from that principle, I'm simply  
2 saying that in particular relationship to our own  
3 cross-examination, I'm a little worried about the time  
4 limit because, well, I shouldn't be worried about the  
5 time limit, if we had to come back to it we would, but  
6 many of these kinds of points of course are points that  
7 we intend to discuss with the witnesses on this  
8 cross-examination.

9 THE CHAIRMAN: The Board has another  
10 suggestion, and we'll throw this out for discussion,  
11 and that is the Ministry presents the plan, files the  
12 plan. The parties have an opportunity to review it  
13 without the Ministry putting in the direct evidence,  
14 and then the Board holds a session with the parties as  
15 to the areas of the plan that would be the subject of  
16 cross-examination; in other words, scope the issues  
17 with respect to the plan put forward that would be  
18 dealt with by the various parties in opposition through  
19 cross-examination, and at that point the Ministry would  
20 produce the witnesses to be cross-examined on that  
21 plan.

22 MS. SWENARCHUK: Could I state one  
23 further submission?

24 The Ministry has proposed filing whatever  
25 it is going to file by December 15th, and I would like

1 to request that the Board provide an earlier date.

2 That is some time away. If we are going to have it  
3 reviewed, that is going to take time as well, and if we  
4 are going to deal with one plan as opposed to excerpts,  
5 which I would certainly hope, then I think it shouldn't  
6 be that difficult to provide the plan earlier than  
7 December 15th.

8 THE CHAIRMAN: Well, can the Ministry not  
9 choose a plan for this purpose? I think the Board is  
10 taking the position that excerpts will be of little  
11 value from various plans for many of the reasons  
12 indicated by Ms. Swenarchuk. If the Ministry is going  
13 to produce another plan as an example, can they not  
14 choose whichever plan they want to put forward at an  
15 earlier date and at least put it out to the parties  
16 that will have been a completed plan? It's in the  
17 public realm now anyway. It just remains for the  
18 Ministry to choose which one they want to put forward.

19 MR. FREIDIN: I don't have anyone here who  
20 can give me instructions on that matter. I can tell  
21 you that Mr. Kennedy and Mr. Bishop and some of the  
22 other members of that panel are up there now talking  
23 about this very matter, the process should be involved  
24 this matter. They obviously have a lot of things on  
25 their mind quite apart from looking for another plan.

1 I say to them we will try to provide that information  
2 as soon as possible, but no later than December 15th.  
3 I don't want to make an undertaking that I can't keep,  
4 or my client can't keep.

5 THE CHAIRMAN: Why don't you do this at  
6 least, Mr. Freidin: Why don't you talk to Mr. Bishop  
7 and Mr. Kennedy and get a clear indication from them  
8 when they think they might be able to choose the  
9 particular plan and come back to us as soon as we get  
10 up there tomorrow or the next day.

11 MR. FREIDIN: I can tell you that my  
12 submissions today were made after I discussed this  
13 matter with Mr. Bishop and Mr. Kennedy. They felt  
14 comfortable that they could deliver by the date that I  
15 suggested. I will go back and see whether they could  
16 deliver, undertake to deliver on an earlier date  
17 and I'll advise you.

18 THE CHAIRMAN: All right.  
19 What is the opinion of parties with  
20 respect to the Board's latest suggestion, to have the  
21 plan reviewed by everybody and then the Board will have  
22 a session to scope whatever issues might come out of  
23 that plan for cross-examination?

24 MR. COSMAN: Mr. Chairman, frankly, I  
25 share some of the counsels' concern that filing a plan



1 in evidence without permitting cross-examination could  
2 be dangerous.

3 THE CHAIRMAN: No. We are suggesting  
4 after the scoping session there will be  
5 cross-examination.

6 MR. COSMAN: Therefore, I think that your  
7 proposal is a way to deal with that, because it would  
8 certainly enable parties, if they chose - and it may be  
9 the parties will not choose after having reviewed the  
10 plan - to spend much time on it in cross.

11 I think parties should be permitted to  
12 cross-examine in respect to materials filed before this  
13 Board.

14 THE CHAIRMAN: Certainly what the Board  
15 would attempt to accomplish is to focus upon the areas  
16 of the new plan that would be addressed in  
17 cross-examination, make sure there is not repetition by  
18 the various parties and make sure that the areas that  
19 are being addressed are only the areas of concern and  
20 not areas that the parties have no particular --

21 MS. SWENARCHUK: Issues of concern.

22 MR. HUNTER: I think I share the  
23 frustration and concern expressed by Mr. Campbell and  
24 Ms. Swenarchuk, because Mr. McGibbon has been spending  
25 an extraordinary amount of time on that plan, and I'm

1       trying to work through in my own head now to what  
2       degree do I cross-examine on that?

3               THE CHAIRMAN: Well, the Board feels that  
4       cross-examination on the Red Lake plan is fair game.  
5       There is no reason why the parties can't cross-examine  
6       and continue to cross-examine on the Red Lake plan. It  
7       is before us. It may not, in fact, represent the best  
8       example, unfortunately, and another plan put forward  
9       might address some of the deficiencies that arise in  
10      the Red Lake plan.

11             MR. HUNTER: I want to understand a  
12      comment made by Mr. Freidin in response to the  
13      Federation of Hunters and Anglers. I believe he said -  
14      and if I'm misstating him he will correct me - that the  
15      Federation would cross-examine on the Lac Seul plan  
16      with respect to this particular panel. Did I  
17      understand Mr. Freidin correctly on that?

18             MR. FREIDIN: What I said was that the  
19      interrogatory was asked by OFAH about something or  
20      other, the Lac Seul plan was part or all of the answer  
21      and that OFAH, I would think, would be at liberty to  
22      use answers provided to interrogatories in the usual  
23      fashion.

24             MR. HUNTER: The reason I raise that, Mr.  
25      Freidin, is we had raised in previous panels questions

1 about the Lac Seul management plan because evidence had  
2 been led in relationship to that plan and how it  
3 accommodated native interests. I'm just raising this  
4 because again, I'm becoming very concerned. It was my  
5 error. I was not aware of the Federation's  
6 interrogatory in relationship to that plan. I've just  
7 been made aware of them now. What I'm really trying to  
8 do is to balance off exactly what is it that the  
9 Ministry is presenting as the plan.

10 MR. FREIDIN: We did not present the Lac  
11 Seul plan, we have not made a decision to present the  
12 Lac Seul plan yet, we provided that as an answer to an  
13 interrogatory.

14 MS. SWENARCHUK: With respect,  
15 Mr. Freidin, I think that that trivializes the answer  
16 obtained. It seems from Dr. Quinney's statement of the  
17 interrogatory that basically a commitment was made by  
18 the Ministry in that interrogatory response that this  
19 is the plan that best represents the planning process  
20 particularly as it regards wildlife concerns in the  
21 boreal forest.

22 MR. FREIDIN: If it was in fact an answer  
23 which indicated that it was a best example of wildlife  
24 concerns, and I didn't want to comment on whether that  
25 is what it was limited to because I wasn't sure, my

1 understanding is that that is what it was limited to,  
2 and in fact you have got the answer.

3 We did not lead any evidence in Panel 15  
4 through the Red Lake plan that it was the best example  
5 of wildlife management or moose management or anything  
6 else in that regard. So I take umbrage at it being  
7 suggested that somehow - to use the phrase of last  
8 week - that the Ministry is playing 'silly bugger' with  
9 the other parties. We are not. We are dealing with  
10 everybody in an up-front way and complying with the  
11 procedural requirements of this Board and all the  
12 parties get all the answers to all the interrogatories.

13 THE CHAIRMAN: All right.

14 Is everyone essentially in agreement with  
15 the Board's last proposal, that the Ministry provide  
16 one additional plan, the parties look it over, the  
17 Board will sit down and try and scope the areas or  
18 issues in dispute and the Ministry would provide  
19 cross-examination or a panel to be cross-examined on  
20 those areas?

21 MS. SWENARCHUK: Mr. Chairman, all I  
22 would add to that would be our submission that the  
23 appropriate individuals to be cross-examined must  
24 include the plan author.

25 THE CHAIRMAN: That sounds reasonable.



1                   MR. FREIDIN: Mr. Chairman, I take it all  
2 of these directions from the Board are all subject to  
3 the Ministry deciding that it wishes to file  
4 something,--

5                   THE CHAIRMAN: Yes.

6                   MR. FREIDIN: --number one.

7                   Number two, apropos of your comments of  
8 last week and your agreement with them this morning,  
9 that it is the Ministry's case and that the Board  
10 wishes a concern it has about documentation for area of  
11 concern planning to be addressed, that the Ministry be  
12 permitted, in the face of possible criticism from Ms.  
13 Swenarchuk and others, perhaps even the Board, that if  
14 it feels that it can best address the Board's concern  
15 through the filing of documentation, either additional  
16 to or in the place of, an entire plan, that the  
17 Ministry, again, putting in its own case, be permitted  
18 to do that and, again, the Board and other parties to  
19 make submissions about it and give it the weight it  
20 should in fact be given.

21                   THE CHAIRMAN: Well, Mr. Freidin, the  
22 Board does not want to have pieces of various plans put  
23 before them. That, we feel, is a waste of time. It is  
24 a waste of time to some extent in the sense that no  
25 matter what plan you put before us, it will undoubtedly

1 be subject to criticism by various parties with various  
2 interests, I'm sure. If we are sure of anything, we  
3 are sure of the fact there is no perfect plan out  
4 there.

5 So consequently, we are simply and have  
6 tried simply to provide for one additional opportunity  
7 in terms of a representative plan to be put before the  
8 Board, and we are not going to reopen all of the  
9 evidence that we have heard up to this point going back  
10 some 16 or 17 months to revisit each and every topic  
11 that we have covered up to this point.

12 The Ministry's case is substantially in,  
13 and all we want further is one - and our suggestion  
14 was - one more representative example: not ten, not  
15 fifteen, one. And that is up to the Ministry as to  
16 whether they feel that they want to put that before the  
17 Board. If the Ministry chooses not to do so and wants  
18 to leave the Board with the representative example of  
19 the Red Lake plan, that is their right. Any other  
20 party in their side of the case can comment on that and  
21 can bring out in their own side of the case what areas  
22 they feel the Red Lake plan did not address, and that  
23 is how the Board actually is going to proceed.

24 So I think we are going to curtail any  
25 further discussion, because we are getting nowhere

1 fast, to the extent that the Board's ruling is, if the  
2 Ministry wishes to place one additional plan as a  
3 representative plan before the Board, they are at  
4 liberty to do so. They will file it; we will admit it  
5 as an exhibit; the parties will have an opportunity to  
6 review it; and the Board will hold a separate scoping  
7 session to delineate the areas which will be the  
8 subject of cross-examination. The Ministry will be  
9 obliged to provide the witnesses applicable to that  
10 plan, which witnesses shall include the plan author.

11 The Ministry can alternatively advise us  
12 if they don't wish to place before the Board any  
13 further plan.

14 We will now move on to the third and last  
15 issue.

16 Going now to the scoping of Panel 16.  
17 Mr. Martel is retiring for a moment to get some  
18 documents.

19 MR. COSMAN: Perhaps, Mr. Chairman, while  
20 Mr. Martel is out, just a matter of administration,  
21 three questions.

22 One question: Next week on Monday, what  
23 time do we start, is it 8:30 or 1:00?

24 Second question: Do we know when the  
25 March break starts so I can be of assistance to my

1 clients in saying when their cases are likely to start?

2 THE CHAIRMAN: All right.

3 With respect to next week, the Board  
4 apologizes, but I just found out yesterday I am obliged  
5 to attend a meeting on Monday at 4:00 p.m. at the  
6 Legislature. This is a meeting involving the EAPID  
7 process in which the Board has been involved in the  
8 past and is of some importance. What I am suggesting  
9 as a possibility, I was going to suggest coming in the  
10 Sunday night, sitting the Monday, I would leave on the  
11 two o'clock plane and come back that evening and be  
12 able to proceed on Tuesday and Wednesday.

13 MR. FREIDIN: Excuse us, Mr. Chairman.

14 The flight is 11:40, that's Air Canada,  
15 then 4:10 is the next one. There is no 2:00 flight  
16 that I'm aware of.

17 THE CHAIRMAN: You're right. It's going  
18 the other way.

19 ---Discussion off the record

20 THE CHAIRMAN: The Board would like the  
21 possibility of canvassing -- it's unfortunate some of  
22 these come up and some of them are absolutely  
23 unavoidable. It looks like we are going to lose the  
24 23rd and we are losing already the 26th. That leaves  
25 the Tuesday and the Wednesday. We would be prepared to



1 sit fairly lengthy hours both the Tuesday and the  
2 Wednesday. The question is where?

3 MR. FREIDIN: Mr. Chairman, to bring all  
4 those witnesses and the paper that may be required -  
5 just to go back up - when would we be required in  
6 Thunder Bay, please?

7 THE CHAIRMAN: All right. Let's go up  
8 Monday night, start early Tuesday and we may sit into a  
9 Tuesday evening session, if we can all last that long,  
10 sit all day Wednesday and not come out until evening on  
11 Wednesday for the seven o'clock flight. So we will  
12 only be sitting next week on the 24th and 25th.

13 MR. COSMAN: Could I ask just two more  
14 basic administrative questions? I don't know if --

15 THE CHAIRMAN: Look what you got into the  
16 last time.

17 MR. COSMAN: I'm glad I learned, though.  
18 With respect to March break and the  
19 starting of our case, does the Board know yet when the  
20 both the north and the south have --

21 THE CHAIRMAN: No. We haven't had formal  
22 advice on that. I understand some of the southern high  
23 schools are out during the week of the 17th--

24 MR. COSMAN: I can wait until next week.

25 THE CHAIRMAN: --of March, but I think we

1       should confirm that as to when that particular time is.

2               MR. COSMAN: The third question is: The  
3       Baskerville evidence is going to be heard in about six  
4       or seven weeks. Obviously it's going to require some  
5       preparation if we are going to be of assistance to the  
6       Board. Has the Board heard from counsel as to when the  
7       statement is going to be made?

8               THE CHAIRMAN: Yes. The last advice the  
9       Board had from Mr. Turkstra was that it was supposed to  
10      have been delivered last week. Obviously, it wasn't.  
11      We will be in contact with him immediately to ensure  
12      that that is delivered as quickly as possible.

13              MR. FREIDIN: Is December the 4th the  
14      firm date for starting Dean Baskerville now?

15              THE CHAIRMAN: That is what we are  
16      advised. It's December the 4th for approximately eight  
17      days and there is one day in there - specific date of  
18      which I don't know - that he is unavailable.

19              MS. SWENARCHUK: Eight hearing days,  
20      Mr. Chairman?

21              THE CHAIRMAN: Eight hearing days.

22              MS. BLASTORAH: Mr. Chairman, is that  
23      going to be four days a week in Toronto then, since the  
24      hearing --

25              THE CHAIRMAN: Yes. We will certainly

1       increase the number of hearing days to accommodate  
2       getting as much of Dean Baskerville's evidence on the  
3       record as possible. In fact, we might even go to five  
4       if he is available. We want to get as many of those  
5       days in that two-week period that he is available as  
6       part of the hearing at that time as we can.

7               MS. SEABORN: Mr. Chairman, just along  
8       those lines, will the Board be issuing a schedule for  
9       the month of November? I believe the last official one  
10      we have just goes up to November 2nd.

11             THE CHAIRMAN: That's right. We  
12      discussed it amongst ourselves. There are a couple of  
13      amendments we have to talk about and then we'll issue  
14      it probably within the next week.

15             MS. SWENARCHUK: Mr. Chairman, perhaps  
16      this is premature, but with regard to Dr. Baskerville's  
17      appearance, could you indicate at some time what the  
18      order of cross-examination will be for the parties?

19             THE CHAIRMAN: We haven't determined it  
20      and we want to discuss with counsel to the Board what  
21      that order might be, and, in fact, when we determine  
22      the order we may also hear submissions from other  
23      counsel as to that order. Again, he's in sort of a  
24      separate category from most witnesses, and we'll have  
25      to determine what, in our view, is fair to everybody.

1                   Okay. We are back to scoping Panel 16.

2                   By way of preliminary comment, the Board  
3 just wants to mention that we found that some of the  
4 parties in redoing the statements of issue for this  
5 panel have, in our view, assisted the Board and other  
6 parties in defining some of these issues.

7                   In particular, we would point to the  
8 statements of issue filed by Mr. Edwards, Forests For  
9 Tomorrow and the Industry, as being particularly  
10 helpful. We find that it is of some assistance when  
11 outlining these issues to indicate the line of  
12 questioning or the areas which will be specifically  
13 questioned on so that both the Ministry knows in  
14 presenting the direct evidence, and it provides some  
15 basis upon which the Board, and then say to the parties  
16 submitting the statements, confine yourself to those  
17 issues.

18                   Again, the purpose of this is to  
19 specifically focus upon those areas which are going to  
20 take up some of the time at the hearing, and we want  
21 you to be as precise as possible.

22                   MR. CASSIDY: Mr. Chairman, if I could  
23 comment on that to the extent that we heard your  
24 comments last week. We attempted to live up to them,  
25 but with respect to your comments you just made, there



1 are some documents which were just received by us and  
2 the other parties which are in the process of being  
3 reviewed I know by my client and I suspect by the  
4 others. Therefore, it's not possible for me to say  
5 that our cross-examination will be solely restricted to  
6 the materials in here because that has not yet been  
7 completed.

8                   You should also aware there are -- and  
9 I'm sure you can appreciate discussions going on among  
10 the parties which are resolving issues as well, and  
11 they may or may not cause cross-examination to be  
12 lengthened or shortened hopefully.

13                   THE CHAIRMAN: We understand that,  
14 Mr. Cassidy, and we certainly will take that into  
15 account.

16                   I think what we are trying to say is, be  
17 as specific as you can and be as forthright as you can  
18 in outlining precisely the line of questioning that you  
19 want to take on which issues so that when we deal with  
20 your particular examination, we can then refer back and  
21 say, this is obviously the areas you identified, this  
22 is what you want to canvass, and we would not expect  
23 you to deviate materially from the positions you've  
24 taken, subject, of course, to documentation that you  
25 haven't yet reviewed at the time these statements were

1 produced.

2 Now, are there any areas of the evidence  
3 that the proponent wishes clarification on from the  
4 parties submitting these revised statements?

5 MS. BLASTORAH: Mr. Chairman, I was just  
6 wondering, first of all, whether the Board, having  
7 indicated they found the revised statements of issues  
8 filed by the parties helpful, I was wondering whether  
9 the Board had any additional comments to make as to  
10 items they might like to hear further evidence about or  
11 areas they feel should be addressed, or whatever?

12 THE CHAIRMAN: I don't think beyond what  
13 we stated in the first session when we reviewed the  
14 various documents by number, I don't think there is any  
15 further comments.

16 MS. BLASTORAH: Thank you, Mr. Chairman.  
17 I'm assuming that none of the parties have any  
18 additional comments beyond those made by Mr. Cassidy?

19 THE CHAIRMAN: Well, we don't know.  
20 Dr. Quinney, I'm not sure that we have received yours.

21 DR. QUINNEY: Mr. Chairman, you will not  
22 have received the revised statement of issues from  
23 Panel 16 for this reason: To tell you the truth, we  
24 honestly felt that the original statement of issues  
25 that we had provided the Board that we were trying to

1 be as concise and relevant as possible pursuant to your  
2 original order.

3 THE CHAIRMAN: Very well, Dr. Quinney.  
4 Reviewing your original statement, there is some  
5 provision to some of the questions asked, and if you  
6 were going to stand by that --

7 DR. QUINNEY: I will also say in future,  
8 Mr. Chairman, we will carefully review those revised  
9 statement of issues from the other parties and if we  
10 can continue to pare down, so to speak, we will.

11 THE CHAIRMAN: Bearing in mind our  
12 comments concerning representation in terms of matters  
13 addressed by other parties.

14 MS. SEABORN: Mr. Chairman, just along  
15 that same vein, our supplementary statement of issues  
16 is essentially the same as our first, and that was for  
17 the reason we felt we had identified very specific  
18 questions in our original statement of issues. So  
19 those are the questions we agreed to ask the proponent.  
20 We make no bones about that.

21 The only additional thing I did identify  
22 in the supplementary statement of issues was to tie in  
23 the paragraphs on the specific terms and conditions I  
24 proposed to ask the witness panel questions regarding.

25 THE CHAIRMAN: Well, that is helpful,

1       again, Ms. Seaborn. That is something the Board wants  
2       to emphasize in our future statements of issue. We  
3       want them tied in as much as possible to the specific  
4       conditions, and when all of the conditions are on the  
5       table from all the parties, then the statements, at  
6       that point in time, will make reference to  
7       specifically -- to perhaps other conditions than those  
8       put forward only by the proponent.

9               MS. BLASTORAH: Mr. Chairman, given that  
10       if there are no other comments, I have a couple of  
11       matters to address with regard to issues raised again  
12       in these revised statements of issue.

13               First of all, I would like to advise that  
14       Ms. Murphy did, during the meeting with her counsel on  
15       October 10th, explain to other counsel and Mr. Hanna  
16       the position of the Ministry with regard to the  
17       proposed amendment for the Crown Timber account, and I  
18       would like to put that information before the Board  
19       now.

20               That position is that the Ministry  
21       proposals were presented to cabinet and were approved  
22       in principle by cabinet. At that time our instructions  
23       from cabinet were to provide the draft bill. Once it  
24       has reached first reading, that bill would be subject  
25       to cabinet privilege until such time as it was



1 presented for first reading -- currently the bill --  
2 rather legislative council -- for drafting for some  
3 time and is not yet ready for and has not been  
4 presented for a first reading.

5 As a result of that, and the subsequent  
6 cabinet privilege which attaches, we approached cabinet  
7 office and in fact asked for and received the  
8 permission of cabinet office to provide a general  
9 description of proposals put forward by the Ministry of  
10 Natural Resources. That general description has been  
11 prepared in draft and has been presented to cabinet  
12 office and we are currently awaiting their response to  
13 that document which we have not yet received, and I can  
14 advise the Board and other parties as soon as  
15 permission of cabinet office is received, that document  
16 will be made available to the other parties for their  
17 review, and until such time we are of course under the  
18 constraints of cabinet privilege and cannot address the  
19 matter beyond that.

20 THE CHAIRMAN: Do they have any  
21 indication when it might be presented for first  
22 reading?

23 MS. BLASTORAH: Not at this time.

24 The second matter I would like to address  
25 is the issue of details with regard to the monitoring

1 program. This is something which was raised in issue  
2 by the Board, as well as a number of other parties, and  
3 has been addressed again in a number of these revised  
4 statements of issue as has been noticed today. And, as  
5 the Board is aware, the Ministry of Natural Resources  
6 did make available to the Board and the parties updates  
7 on the monitoring proposals and the population  
8 monitoring program as well on October 5th, and that was  
9 an update current to October 5th as to the status of  
10 those various programs.

11 Given the continuing interest of both the  
12 Board and the other parties, the Ministry feels the  
13 most expeditious way to deal with that information and  
14 with respect to additional detail further to those  
15 updates, is to provide witnesses in Panel 16 who can  
16 respond to questions arising from that concern and in  
17 relation to the specific details of those programs, and  
18 it is currently the intention of the Ministry to do  
19 that, to make the witnesses available, and those  
20 witnesses will be people who are directly involved in  
21 these programs and can respond to questions with regard  
22 to the details of those programs.

23 If I could have one moment, Mr. Chairman.

24 Mr. Chairman, I can advise the names of  
25 those witness will be Dr. Euler, with whom the Board is

1 familiar, and the second witness is Dr. McLean who is  
2 currently the director of wildlife.

3 The third issue I would like to address  
4 is a matter arising from the Forests For Tomorrow  
5 statement of issue. As you aware from reviewing that,  
6 Ms. Swenarchuk has pointed out the Forests For Tomorrow  
7 group filed substantial interrogatories rather late in  
8 the process. Consequently, they have not received the  
9 answers to those interrogatories, and I believe, as was  
10 the case in her previous statements of issue, that in  
11 any event, the Ministry reviewed one. She feels her  
12 cross-examination will be issues which she feels remain  
13 outstanding once she receives those answers to  
14 interrogatories.

15 We had been advised to deliver those  
16 answers to her in Thunder Bay tomorrow. I believe Ms.  
17 Murphy has advised her that. Unfortunately, these  
18 interrogatories were received approximately five months  
19 later and they were 60 in number. Our concern is that  
20 obviously quite a number of issues could arise out of  
21 those interrogatories, and it's rather difficult for us  
22 to ascertain specifically from the interrogatories  
23 which issues Ms. Swenarchuk intends to address as a  
24 result of that.

25 So perhaps given her statement in her

1 covering letter that she intends to cross-examine on  
2 issues she feels have not been addressed by those,  
3 perhaps she can advise which issues she feels remain  
4 outstanding after she has reviewed the answers to  
5 interrogatories.

6 THE CHAIRMAN: That seems reasonable.

7 Ms. Swenarchuk, after you have had an  
8 opportunity to review the answers to interrogatories,  
9 could you advise the Ministry as to the areas upon  
10 which you will cross-examine relative to those  
11 interrogatories?

12 MS. SWENARCHUK: Yes.

13 THE CHAIRMAN: You have that undertaking.

14 MR. CASSIDY: In the same regard, not  
15 having seen those answers, I may be in the same  
16 position and I also would be agreeable to speak to the  
17 Ministry in advance with respect to my client's  
18 perspective, but if we want it resolved, it may  
19 necessitate some cross-examination by us.

20 THE CHAIRMAN: Well, as long as the  
21 Ministry has an indication of what areas you are going  
22 to be examining.

23 MR. CASSIDY: Yes.

24 MS. BLASTORAH: One last item, Mr.  
25 Chairman. And I appreciate Mr. Edwards is not here,



1 but I would just like to point out at this time I have  
2 some concern with regard to one item raised in his  
3 revised statement of issue, which is his Item No. 4,  
4 and although he is not here, it is somewhat incumbent  
5 upon me to point out the fact that I think that issue  
6 is probably something which more properly falls within  
7 the subject area of Panel 15, and given that his  
8 cross-examination of that panel is, I understand, not  
9 yet complete, I would just like to raise that at this  
10 time and perhaps we will be contacting Mr. Edwards and  
11 pointing that out to him.

12 MR. FREIDIN: I think he addressed that  
13 last week in his cross-examination. It may be he's  
14 already covered it. To the extent he has, I would have  
15 to agree.

16 THE CHAIRMAN: He is going to be on  
17 tomorrow first thing, I believe, so perhaps we can deal  
18 with it right at the outset. If you could raise your  
19 concern again.

20 MS. BLASTORAH: Unfortunately, I won't be  
21 there in Thunder Bay, but Mr. Freidin will address it.

22 I do have one or two other small  
23 questions really with regard to his revised statement  
24 of issue, and I think the most expeditious way to deal  
25 with it is simply contact him directly and ask for

1 clarification.

2 The only other comment I would make, is  
3 we do intend to address the issues raised by the Board  
4 at the last scoping session, and I believe most of the  
5 items raised in both the original and revised  
6 statements of issues from the other parties deal with  
7 basically the same items.

8 So to the extent we will be addressing  
9 the Board's concern, we will also address those  
10 concerns of the parties and we'll make every attempt to  
11 address any additional concern raised as well by other  
12 parties.

13 MS. SWENARCHUK: Can I ask how long the  
14 Ministry expects to be in direct evidence?

15 MS. BLASTORAH: At the current time,  
16 one-and-a-half days in direct.

17 THE CHAIRMAN: Within the newly  
18 established guidelines?

19 MR. FREIDIN: Not yet.

20 MS. BLASTORAH: I think that was always  
21 our proposed time.

22 MS. SEABORN: Just one quick comment.

23 With respect to the recent details of the  
24 monitoring program that were provided to all the  
25 parties in the letter of October 5th, 1989. I'm

1       wondering if it might be helpful - and I don't think  
2       this needs to be done in front of the Board - if the  
3       Ministry could advise parties the extent to which any  
4       of those details would change the evidence that is in  
5       Panel 16 or to the extent that it would supersede it.  
6       It may be none of the evidence in Panel 17 is  
7       superseded by the details, but it may save time if --  
8       because of course these things evolve and if anything  
9       that is in Panel 16 is no longer current because of  
10      these new details, perhaps Mr. Freidin and myself could  
11      let parties know so we don't spend time focusing on  
12      that in our preparation.

13               MS. BLASTORAH: Mr. Chairman, I'm  
14      somewhat at a disadvantage because I hadn't anticipated  
15      the question, but my understanding at the present time  
16      is that nothing in that material which is intended as  
17      an update as to where the Ministry programs are at the  
18      present time contradicts the evidence in Panel 16 or is  
19      intended to supersede it.

20               Rather it is intended as additional  
21      detail as to current status of those programs, and  
22      perhaps if anything significant occurs to me on review  
23      of that material we'll contact Ms. Seaborn. That is my  
24      understanding.

25               MS. SEABORN: That answers my question.

1 THE CHAIRMAN: Very well.

2 DR. QUINNEY: If I may. At the beginning  
3 of cross-examination on the Panel 15 after Mr. Ardis  
4 finishes tomorrow, I would like to distribute to the  
5 Board and parties the exhibits we'll be referring to  
6 and the materials we'll be introducing.

7 THE CHAIRMAN: Very well.

8 Do you have any idea how long you are  
9 going to be or Mr. Hanna is going to be?

10 DR. QUINNEY: Maximum of three hearing  
11 days. Maximum of three hearing days, and by the end of  
12 the day one we can give you an update on that.

13 THE CHAIRMAN: Okay. We'll have all the  
14 parties bring with them for your examination the  
15 exhibits listed there.

16 Very well. Ladies and gentlemen, if  
17 there is nothing further we'll adjourn until tomorrow  
18 morning at 8:30 in Thunder Bay.

19 MR. FREIDIN: I'm just wondering, does Dr.  
20 Quinney have copies of the documents listed in Table 2?  
21 There is a series of articles, it looks like --

22 DR. QUINNEY: I don't have them with me  
23 right now.

24 MR. FREIDIN: I assume we are going to  
25 have some witnesses who have familiarity with those



1 documents.

2 DR. QUINNEY: I don't have those  
3 documents with me. They will be in Thunder Bay with me  
4 this evening.

5 THE CHAIRMAN: There are going to be  
6 excerpts?

7 DR. QUINNEY: Just short witnesses. It  
8 is not a question of -- these witnesses will not have  
9 to have familiarity with all of these articles in any  
10 detail.

11 MR. FREIDIN: Well --

12 THE CHAIRMAN: That is an issue, Dr.  
13 Quinney, that comes up from time to time. It is unfair  
14 in some instances to force a witness to answer even a  
15 short question which may or may not be out of context  
16 in terms of its place in a particular article without  
17 at least having the opportunity of having referred to  
18 the article.

19 MR. FREIDIN: In some cases even the  
20 excerpt is seven or eight pages long.

21 THE CHAIRMAN: So we may have to deal  
22 with this on an ad hoc basis, and we don't want a  
23 situation to develop where there is going to be a  
24 substantial delay in your examination because the  
25 parties have not been given prior notice to afford

1 themselves the opportunity of reviewing these articles.

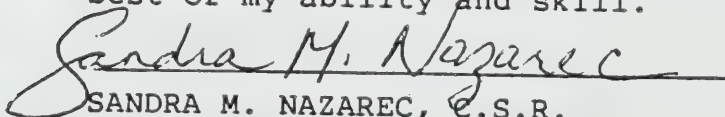
2 DR. QUINNEY: I understand that. And as  
3 I said, with our cross-examination spread over roughly  
4 a three-day period, we will endeavor to ensure that  
5 those materials are available, and in the meantime  
6 we'll --

7 THE CHAIRMAN: Well, you better get them  
8 to the parties as quickly as possible and we'll ensure  
9 that the parties, prior to being compelled to answer,  
10 will have had an opportunity to view what they feel is  
11 necessary to review before they answer, otherwise we  
12 are going to move on without the reference to those  
13 particular excerpts.

14 Very well. Good day. Thank you for  
15 coming.

16 ---Whereupon the hearing was adjourned at 1:31 p.m.,  
17 to be reconvened at 8:30 a.m., Wednesday, October  
18 18, 1989 in Thunder Bay.

19 This is to certify that the  
20 foregoing is a true and accurate  
21 computerized transcription to the  
22 best of my ability and skill.

23   
24 SANDRA M. NAZAREC, C.S.R.

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